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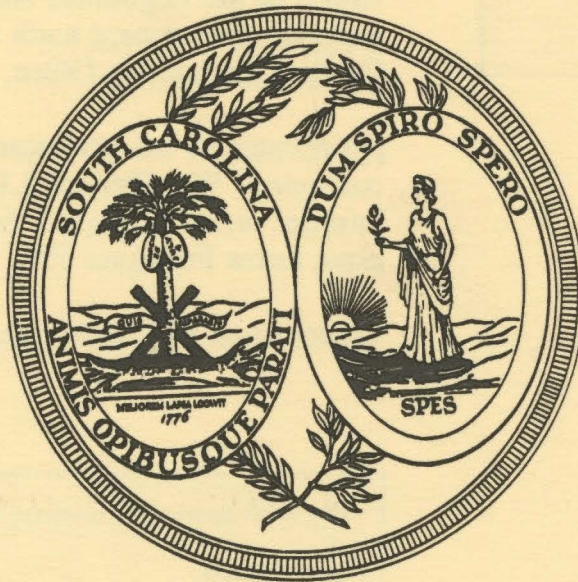
South Carolina Legislative Audit Council

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Report to the General Assembly

June 1990

1990 Sunset Reviews



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Report to the General Assembly

Commissioners of Pilotage for the Port of Charleston

Polygraph Examiners Program

Private Detective and Private Security Agencies

Board of Registration for Foresters

South Carolina Coordinating Council for Economic
Development

Board of Examiners for the Licensure of
Professional Counselors, Associate Counselors and
Marital and Family Therapists

South Carolina Auctioneers' Commission

State Commission for Hearing Aid Dealers and Fitters

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Report Introduction

Pursuant to state law, we have reviewed the laws and operations of eight South Carolina regulatory agencies. The agencies are the Commissioners of Pilotage for the Port of Charleston, the Polygraph Examiners Program, the Private Detective and Private Security Agencies, the Board of Registration for Foresters, the South Carolina Coordinating Council for Economic Development, the Board of Examiners for the Licensure of Professional Counselors, Associate Counselors and Marital and Family Therapists, the South Carolina Auctioneers' Commission, and the State Commission for Hearing Aid Dealers and Fitters.

We reviewed agency activities which took place primarily from January 1985 through January 1990. To conduct these reviews, we interviewed South Carolina government officials, regulated professionals, private association officials, and related interest groups. We also analyzed financial and nonfinancial documents, South Carolina laws and regulations, and operational procedures. The United States Federal Trade Commission assisted us in reviewing state laws and regulations for anticompetitive restrictions (see Report Appendix on page App-1). Finally, we compared regulatory practices in South Carolina to those in southeastern states.

The reviews were conducted and this report was prepared in accordance with generally accepted government auditing standards.

We have kept confidential the revenues generated by harbor pilots in 1988 because it was given to us with the understanding that it was proprietary information. The objectives of the reviews are established in state law and are as follows:

- (1) Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.
- (2) Determine the economic, fiscal, and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

- (3) Determine the overall cost, including manpower, of the agency under review.
- (4) Evaluate the efficiency of the administration of the programs or functions of the agency under review.
- (5) Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.
- (6) Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.
- (7) Evaluate the efficiency with which formal complaints filed with the agency concerning persons or industries subject to the regulation and the administration of the agency under review have been processed.
- (8) Determine the extent to which the agency under review has complied with all applicable state, federal, and local statutes and regulations.

Commissioners of Pilotage for the Port of Charleston

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Introduction

Summary

After reviewing the laws and operations of the Commissioners of Pilotage for the Port of Charleston, we conclude that the regulation of harbor pilots should continue. Harbor pilots help ensure the safe movement of ships through the port thus lessening the risk of injury, death and environmental damage as well as damage to ships, bridges and other property. A study conducted in 1989 indicated that state pilots were 10 to 20 times safer than nonstate pilots (see A-10).

Certain provisions in state law and in commission policies have served to restrict entry into the profession and reduce the opportunity for competition. In addition, the commission needs to revise its rate-setting procedures to ensure that the rates for pilotage services are fair and reasonable.

Background

The Commissioners of Pilotage for the Port of Charleston were established by Act 48 of 1872. The commission is responsible for the licensing of harbor pilots who guide ships into, out of and within the port. In addition, the commission sets the rates for pilotage services, investigates accidents and approves apprentices. The commission is composed of five members which include the chairman of the South Carolina State Ports Authority, a licensed harbor pilot, and three members appointed by the Governor. In addition to the Charleston commission of pilotage, state law provides for commissions of pilotage in Georgetown, Port Royal and Little River. However, the Little River Commission is not active.

State law requires all foreign flag ships and American flag ships over one hundred gross tons engaged in foreign trade to have a state licensed pilot on board when moving within the port. American flag ships engaged in coastwise trade are required to have a federally licensed pilot on board. Public vessels, such as United States Navy ships, are exempt from the requirements for either a state or federally licensed pilot.

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Commissioners of Pilotage for the Port of Charleston set the prices to be charged by harbor pilots for their services. Prices vary based on a ship's draft and gross tonnage. According to information provided by the Charleston Branch Pilot's Association (CBPA), the typical pilotage fee per move is \$1,158. According to the South Carolina State Ports Authority, Charleston pilotage fees are the second lowest among the ports of Charleston, Savannah, Jacksonville, Norfolk and Wilmington. The commission's policies and procedures manual states that pilotage fees account for less than 3% of a ship's total operating expenses while in port. The commission also charges examination and annual registration fees. However, it is unlikely these fees add significantly to the price of goods and services to the consumer.

We reviewed state laws, regulations and commission policies and procedures governing state pilots for anti-competitive effects. This review was conducted with the assistance of the Bureau of Competition of the Federal Trade Commission. The FTC's analysis was confined to the effect of price and entry regulations and did not address regulations designed to enhance navigational safety.

Competition

According to an official with the pilot's association there are three categories of ships which utilize pilotage services in Charleston. State law requires all ships engaged in foreign trade to use a state licensed pilot when entering the port of Charleston. These ships account for approximately 73% of all ship movements in the port of Charleston. American flag ships engaged in coastwise trade are required to use a federally licensed pilot. Public ships, the majority of which are Navy ships, are not required to use a pilot at all. Nevertheless, the Navy does use pilots, contracting out with the CBPA for approximately 70% of its pilotage needs and using civil service pilots employed by the Navy for the remainder.

The 15 state licensed pilots have joined together to form the CBPA, a single entity handling all state pilotage for the port of Charleston. State law prohibits the use of a boat as a pilot boat unless it is owned and operated by, "... the group of associated

pilots then currently licensed" Thus, the CBPA has a monopoly over pilotage services for ships engaged in foreign trade. An Attorney General's opinion issued in February 1985 stated that the state's regulation of pilotage did not violate either federal or state anti-trust laws. However, not all states prevent pilots from forming competing companies. According to an official with the Florida Board of Pilot Commissioners, the port of Panama City has competing pilot companies. Tampa had competing companies until 1989 when the companies merged back into one.

All 15 state licensed pilots for the port of Charleston also hold federal licenses. In addition, there are other federally licensed pilots for the port of Charleston. These federal pilots could, with the proper endorsements on their federal licenses, compete against the state licensed pilots to provide pilotage services for American flag ships engaged in coastwise trade and for Navy ships. An endorsement allows a pilot to provide pilotage services on other routes in addition to the one for which he was granted an original license. In Savannah, a federally licensed pilot competes with state pilots to handle American flag ships engaged in coastwise trade.

Limit on Number of Pilots

Section 54-15-130 of the South Carolina Code of Laws limits the number of state licensed pilots to 15. Limiting the number of pilots can hinder competition by preventing new suppliers of pilotage services from entering the market until the number of pilots falls below the statutory limit. In addition, it can prevent qualified apprentices and federally licensed pilots from becoming state pilots.

In a November 18, 1989 letter to the Audit Council, an official with the FTC stated:

When the number of suppliers is fixed by statute . . . the opportunity for new suppliers to enter the market is curtailed. As a result, incumbents may charge higher prices than would prevail in a competitive market.

A 1986 sunset review of the Florida Board of Pilot Commissioners conducted for the Florida Senate stated:

No public purpose could be identified for the existence of this quota provision. Maintenance of a quota presents a potential threat to the public welfare and should be deleted.

Four of the six southeastern states which regulate pilotage do not set the number of pilots in statute. Instead, the commissions of pilotage determine the number of pilots based on need. There is no limit on the number of federally licensed pilots for the port of Charleston.

Since all 15 licensed pilots belong to the CBPA, any individual wishing to become a pilot must wait until the number of pilots falls below 15. In June 1989, an apprentice completed his apprenticeship and is waiting for the number of state pilots to fall below 15 in order to become a state licensed pilot.

According to the president of the pilot's association, since pilotage rates are set by the commission, the number of pilots has no effect on the price of pilotage. In addition, allowing the commission to determine the number of pilots for the port could result in the number of pilots being determined by individuals for whom port safety may not be the primary concern.

Reciprocity

State law does not allow federally licensed pilots working in the port of Charleston to count their education and experience toward obtaining a state license. Thus, these pilots may be denied the opportunity to provide pilotage services. In addition, this could limit competition for pilotage services.

An applicant for a state license in the port of Charleston must serve six years in the port before becoming a fully licensed pilot. According to state officials in three southeastern states (Alabama, Florida and Mississippi) experience obtained outside the specific port for which the applicant is requesting licensure is allowed to count toward a license. In addition, to obtain a federal pilot's license for Charleston, an individual must have three years of prescribed maritime experience. This experience does not have to have been in Charleston. The applicant must then complete 20 round trips on the specified route for which he is requesting licensure.

The Boards of Medical Examiners, nurses and engineers allow individuals licensed in other states to be granted a license in South Carolina, provided the qualifications for licensure are equivalent.

According to the President of the Charleston Branch Pilot's Association, a primary purpose for licensing harbor pilots is to ensure the safe movement of ships in the port of Charleston. Licensing helps to ensure that the pilots possess the skills necessary to protect the public health, safety and welfare.

Charleston pilots have been allowed to provide pilotage services in other ports in South Carolina without meeting the licensure requirements of those ports. Due to the sudden death of one of the two pilots for Georgetown, the Commissioners of Pilotage in Georgetown granted a Charleston pilot a temporary state license after he received an endorsement on his federal license for the port. In order to receive the endorsement the pilot had to make 15 round trips in the port. State law requires a pilot to complete four years of training prior to becoming a fully licensed pilot in Georgetown.

Due to the physical disability of the pilot in Port Royal, two Charleston pilots were granted full pilot licenses after serving less than one year of the required three years. According to officials with the Port Royal and Georgetown commissions, these pilots were allowed to exempt the full requirements for licensure in these two ports because of their previous pilot experience. However, no provision in state law allows the granting of a temporary license. Restricting state licenses only to individuals who have served an apprenticeship with the Charleston Branch Pilot's Association prevents federal pilots, working in the port of Charleston, from entering into the profession and therefore limits competition.

Age of Apprentices

State law requires that an applicant for apprenticeship be no more than 28 years old. This requirement may be unnecessarily restrictive. In 1986, an applicant for apprenticeship was denied because he was over 28 years old. At the time the application

was considered, the applicant was 28 years and two and a half months old.

A survey of the six southeastern coastal states (besides South Carolina) found that only two states (North Carolina and Alabama) have a statutorily mandated maximum age for apprentices. In these two states the maximum age is 35. Apprentices for other ports in South Carolina do not have a statutorily mandated age limit.

Selection of Apprentices

We reviewed state law and commission policy governing the selection of apprentices and found the following.

Selection Process

Individuals wanting to become apprentices submit applications to the commission. The commission then determines if the individuals meet the eligibility requirements set forth in the law. Those individuals who are deemed eligible by the commission then have their applications forwarded to the CBPA.

Commission policy states:

The selection of apprentices from among the eligible applicants is a matter that rests solely with the associated pilots

Further:

The associated pilots may select their apprentices in any manner they deem suitable

The pilots contact all eligible applicants to determine if they wish to proceed with the selection process. Then a board of interview is convened to interview all applicants. The board then forwards the results of the interviews to the individual pilot whose turn it is to select an apprentice. Once selected, all licensed pilots vote on whether or not to approve the individual. Once approved by the pilots, §54-15-100 requires the individual to be approved by the commission. Since all licensed pilots

belong to the CBPA, eligible applicants not meeting their approval could be prevented from becoming pilots.

Appeals Process

The commission's policies and procedures manual allows the licensed pilots to terminate apprentices and does not allow apprentices who are terminated to appeal the termination to the commission. The manual states:

At any time during an apprenticeship that the majority of pilots determine that any apprentice fails to demonstrate the performance expected, that apprentice may be terminated *There is no appeal route to the Commissioners for such termination. [Emphasis Added]*

Allowing a private group to terminate the apprenticeship process without providing for an appeals mechanism may result in individuals being denied licensure without just cause.

Recommendation by Majority of Pilots

Once an apprentice completes his apprenticeship he must take a licensing exam. However, §54-15-60 of the South Carolina Code states, "No one is eligible for examination . . . until he . . . is recommended by a majority of the pilots licensed under §54-15-120 and §54-15-130" Since all licensed pilots belong to the CBPA, the association could prevent an apprentice from becoming a licensed pilot by withholding its recommendation.

In a November 18, 1989 letter to the Audit Council, an official with the Federal Trade Commission stated:

Given an opportunity to veto new entry, incumbents may prevent particularly aggressive competitors or innovative and more efficient suppliers from entering the market. By empowering incumbents to select entrants, the law encourages pilots to act as collaborators, not competitors.

In 1985, we recommended removal of a provision allowing licensed pilots to approve apprentices. Section 54-15-100 was amended to delete pilot approval of apprentices and replaced with a provision requiring the commission to approve apprentices.

Additional Restrictions

The FTC also identified several other issues which may reduce the efficiency of pilotage services. The requirement that all boats used for pilotage be owned and operated by the group of licensed pilots, and the requirement that pilots not engage in any other business can result in pilots operating, ". . . as a close-knit fraternity of pilots, rather than as businesses that compete vigorously in whatever spheres offer an opportunity for profit." Also, allowing pilot boats to be owned by only one group of associated pilots prevents the formation of a competing pilot's association and ensures the current association's monopoly on pilotage services.

Recommendations

The General Assembly may wish to consider amending §54-15-130 of the South Carolina Code of Laws to allow the Commissioners of Pilotage for the Port of Charleston to set by regulation the number of pilots needed for the port of Charleston.

The General Assembly may wish to consider amending §54-15-100 and §54-15-120 to permit the Commission to allow previous pilot experience in Charleston to count toward a state license and to remove the age requirement for apprentices.

The General Assembly may wish to consider amending §54-15-90 and §54-15-120 to allow the Commission to grant temporary or emergency licenses when deemed necessary.

The Commission should revise the procedures used to select apprentices and establish appeal procedures for the termination of apprentices.

The General Assembly may wish to consider amending §54-15-60 of the South Carolina Code of Laws to remove the requirement that apprentices be recommended by a majority of licensed pilots prior to taking the examination.

Issue (1)
Effects of Regulation

The General Assembly may wish to consider amending §54-15-180 and §54-15-200 to remove the requirement that all pilot boats be owned by the group of licensed pilots and that pilots be prohibited from engaging in another business.

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

Harbor pilots are responsible for safely guiding ships into, out of and within the port. Unsafe harbor conditions can result in injury, death and environmental damage, as well as damage to ships, bridges and other property. State licensed pilots in the port of Charleston perform approximately 4,100 ship movements per year. According to information provided by the South Carolina State Ports Authority, the value of cargo handled through the port of Charleston in 1987 was \$9.5 billion. The port of Charleston ranks first among container cargo ports in total tonnage in the Southeast and Gulf Coast and second only to the combined port of New York/New Jersey on the entire East Coast.

In the absence of state regulation of harbor pilots, the United States Coast Guard could assume the licensing of harbor pilots. Individuals wanting to become pilots would be required to meet the minimum standards for a federal pilot's license. These standards are significantly less than those currently required for a state pilot's license.

As previously stated, in order to obtain a federal pilot's license for the port of Charleston, an individual must have three years experience. This experience does not have to be in the specific port for which the individual is applying for licensure. The applicant must then complete 20 round trips on the specific route in the port of Charleston for which he is requesting licensure. A state licensed pilot must serve six years in the port of Charleston before being granted a full pilot's license.

A study conducted by the Battelle organization in 1989 for the American Pilot's Association found that state pilots were, on average, 10 to 20 times less likely to experience accidents than nonstate pilots. All seven southeastern coastal states (including South Carolina) have state regulation of pilotage. Thus, we recommend that the Commissioners of Pilotage for the Port of Charleston be continued.

Further, since the commission has only 15 licensees and annual expenditures of less than \$600, the need for continued review under the sunset cycle is questionable.

Recommendation

The General Assembly may wish to consider removing the commission from the sunset review cycle.

Determine the overall costs, including manpower, of the agency under review.

The Commissioners of Pilotage for the Port of Charleston receive administrative support from the South Carolina State Ports Authority (SCSPA). The SCSPA provides this support at no charge. Officials with the SCSPA estimate the annual administrative costs, including personnel, to be \$520. Commission members do not receive per diem allowances nor reimbursement for expenses for serving on the commission. The commission has no separate appropriation and thus, is not required to comply with an Appropriation Act proviso requiring all occupational licensing boards to generate 115% of their appropriation.

The commission generates revenue through registration and examination fees. This money is kept in a separate bank account at a local bank. As of January 1990, the account had a balance of \$3,054.51. There has been one expenditure out of this account. In May of 1987, the commission reimbursed the Charleston Branch Pilot's Association \$1,300 for the cost of administering the program prior to the SCSPA assuming the administrative duties in 1987.

Recommendation

The Commission should reimburse the South Carolina State Ports Authority for all administrative costs.

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

We reviewed the operations of the Charleston Commissioners of Pilotage and found improvement since the last review. The commission's record-keeping system has improved and the commission has established a policies and procedures manual which addresses, among other areas, the setting of pilotage rates. However, some improvements in the rate setting procedure are needed.

Rate Setting

In 1985, we recommended that §54-15-290 of the South Carolina Code of Laws be amended to prevent individuals with a vested interest from voting on rate increases and that the commission establish rate-setting procedures. Section 54-15-290 was not amended; however, the pilot member of the commission abstained from voting on the last rate increase. The commission has established a rate-setting procedure but improvements in the procedure are needed. The commission does not have guidelines outlining what constitutes reasonable pilot expenses and what expenses can be allowed or disallowed when determining rates.

Pilotage on the Great Lakes is regulated by the United States Coast Guard (USCG). When establishing rates, the USCG requires pilots to provide a certified public accountant's report documenting revenues and expenses. Rates are then set to allow the pilots to recover reasonable expenses plus earn a salary equivalent to that of an individual performing comparable work in the private sector. The South Carolina Public Service Commission, when establishing utility rates, reviews a company's expenses and sets rates so that the company can generate enough revenue to cover those expenses and earn a reasonable rate of return.

In 1986, the commission established a procedure governing rate requests. The procedure requires the commission to consider the expenses incurred by the pilots in providing pilotage services. These expenses include boat purchase and maintenance, dock maintenance, fuel, taxes, insurance and legal and accounting fees. The pilots divide the remaining revenue among themselves after the expenses are paid. In addition to reviewing expenses, the commission considers the average number of vessel

movements, the rates charged for other port services in Charleston, such as linehandling and tugs, state employee pay raises and the pilotage rates in other ports.

While the current procedure does provide the commission with some information needed to set rates, further defining allowable salaries and expenses would help ensure that the rates charged by pilots are fair and reasonable.

Federal Pilotage

The commission does not consider the revenues and expenses associated with federal pilotage when setting pilotage rates. Federal pilotage is not regulated by the commission. However, the current method of excluding the revenues and expenses generated by federal pilotage may not accurately reflect the actual expenses associated with federal pilotage and could result in higher rates for state pilotage.

Approximately 1,100 of the 4,100 moves performed by the pilots are federal pilotage or Navy ships. These moves account for approximately 20% of total pilot's revenues. However, the pilots attribute only approximately 1.5% of their total expenses to federal pilotage. Therefore, the expenses associated with state pilotage may be overstated. Since the commission is required to consider the expenses of state pilotage when setting rates, not properly accounting for these expenses results in the commission establishing pilotage rates that are too high in relation to the cost of providing the service.

According to an official with the Charleston Navigation Company, the pilots operate under the assumption that all expenses incurred by the pilots in providing state pilotage services would be incurred even if they did not perform any federal pilotage. Thus, except for a small engineering cost, all expenses are included when requesting a rate increase.

Reviewing Rates

The commission does not have a system for periodically reviewing the earnings generated through fees set by the commission. Pilotage fees were last changed in May of 1986,

when the pilots requested and received a rate increase. According to information provided by the CBPA, since 1985, pilot net proceeds associated with state pilotage have risen 22% and pilot expenses 57%.

Section 54-15-290 of the South Carolina Code of Laws requires the commission to establish the rates for pilotage services. Thus, the commission has the authority to periodically review the rates charged.

As an example, the Public Service Commission (PSC) audits utility companies on a periodic basis to determine, in part, if they are earning excess profits. PSC has the authority to reduce rates of companies earning a rate of return higher than allowed. A periodic review of pilot revenue and expenses would assist the commission in determining if pilotage fees are fair and reasonable.

Certified Cost Reports

When requesting a rate increase, pilots are not required to provide an audited financial statement showing revenues, expenses and profits and losses. Providing such a statement could assist the commission in determining allowable expenses and a reasonable return for pilotage services.

In Florida, pilots are required to provide an audited financial statement showing profits and losses when requesting a rate increase. In Virginia, the pilotage rates are established by the State Corporation Commission which has full access to pilots' financial records. The USCG requires pilots to provide an audited financial statement when requesting a rate increase.

Recommendations

The commission should revise the rate making procedure to define allowable costs. This procedure should more accurately account for the revenues and expenses attributable to federal pilotage.

The commission should periodically review the rates for pilotage services to ensure that they are fair and reasonable and require that the pilot's association provide an audited financial statement outlining revenues, expenses and profits and losses.

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

In 1985, we recommended that the commission adopt procedures for the public announcement of commission meetings. The commission now routinely notifies the press of its meetings and posts notices outside the offices of the South Carolina State Ports Authority as required by the Freedom of Information Act.

The commission's address and phone number are not listed in either the public or state telephone directories and the commission has not held quarterly meetings as required by its policies and procedures manual. From July 8, 1988 to January 29, 1990, the commission did not meet.

Recommendations

The commission should hold quarterly meetings as required by the policies and procedures manual or revise the policy on when meetings are to be held.

The commission's phone number and address should be listed in the public telephone directory and in the state telephone directory under the South Carolina State Ports Authority.

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The Commissioners of Pilotage for the Port of Charleston are the sole state entity responsible for licensing harbor pilots. The United States Coast Guard issues federal pilots licenses allowing pilots to perform pilotage services on American flag ships engaged in coastwise trade. The USCG also investigates marine accidents. The commission issues state licenses allowing pilots to perform pilotage services on foreign flag vessels and United States vessels engaged in foreign trade and investigates accidents involving state licensed pilots. According to officials with both the USCG and the commission, there is no duplication.

In addition to the Charleston commission, there are also active commissions of pilotage in Georgetown and Port Royal. According to officials with all three commissions, no duplication exists between these Commissions. The South Carolina State Ports Authority (SCSPA) has drafted legislation proposing a statewide commission of pilotage. This could result in increased consistency in decision-making, rate-making and administrative efficiency. However, officials with the Georgetown and Port Royal Commissions feel a statewide commission would result in less local control of port operations. The six other southeastern states (Alabama, Florida, Georgia, Mississippi, North Carolina and Virginia) are evenly divided with three having statewide commissions and three local commissions.

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

The Commissioners of Pilotage for the Port of Charleston have not received any formal complaints in the last three fiscal years. A review of commission records revealed two informal complaints. One complaint involved the pilot's association restricting the movement of certain types of ships in the port. The association responded that the restrictions were implemented due to safety considerations and no further action was taken. The second complaint was a verbal complaint involving an applicant who was denied apprenticeship. The complainant was informed of the complaint procedure but did not file a formal complaint. The commission has established a complaint log and has developed complaint procedures as recommended in the 1985 audit.

In addition to investigating complaints, the commission is responsible for investigating accidents involving state licensed pilots. A review of commission records found four accidents involving state licensed pilots. In only one of the four cases did the United States Coast Guard find the state pilot to have made an error in judgement. The USCG forwarded the findings to the commission. Since the accident was not considered serious, the commission took no action against the state licensed pilot.

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

We reviewed the state laws governing the commissioners of pilotage and found several areas where there were violations or where statutory changes may be needed.

Examinations

The board of examiners does not administer licensure examinations as required by state law. The board of examiners is composed of three "nautical men" appointed by the commission to administer the exam. Section 54-15-60 of the South Carolina Code of Laws states:

All examinations for license are oral and written and by demonstration

In order to become a fully licensed pilot, an individual must pass five examinations during a period of not less than three years.

There is no demonstrative portion to the exam. Also, the oral portion of the exam consists of spontaneous questions asked by the examiners. The oral exam is pass/fail and no records are maintained of the questions asked. The five written examinations were developed by an employee of the pilot's association while he served as executive secretary for the commission. The commission never formally approved the exams.

In 1985, we recommended that examinations be administered in accordance with state law and that exam fees not exceed those allowed by law. In 1985, §54-15-80 was amended to allow exam fees to be set by regulation.

Recommendations

The commission should review and approve the examinations for licensure to ensure their relevance and impartiality.

Licensure examinations should be administered in accordance with state law.

Fees

The Commissioners of Pilotage for the Port of Charleston did not comply with the Administrative Procedures Act (§1-23-10 of the South Carolina Code of Laws) or §54-15-40 when it established certification and examination fees for licensed pilots. In June 1985, the commission voted to establish a yearly \$50 certification fee for pilots. This fee was included as part of the commission policy and procedures manual. The examination fee is \$20.

Section 1-23-10 *et seq.* of the South Carolina Code of Laws sets forth procedures for promulgating regulations. These include publication of proposed regulations in the State Register and approval of the regulations by the General Assembly. Section 54-15-80 requires the commission to set examination, licensing and certification fees by regulation.

Recommendation

The Commission should comply with the Administrative Procedures Act and §54-15-40 of the South Carolina Code when setting licensing fees.

Schedule of Fees FY 89-90

	Fee
Annual Registration Fee	\$50
Initial Short Branch License	200
Subsequent Short Branches	100
Full Branch	150
Examination Fee	20

Source: The Commissioners of Pilotage for the Port of Charleston Policies and Procedures Manual effective January 1986.

Commissioners of Pilotage for the Port of Charleston Comments

Comments on the Final Draft of the Sunset Review:

Recommendation 1. Page A-8. The Commissioners of Pilotage are preparing to publish a proposal for drafting regulations in July 1990. One regulation will place the responsibility for determining the number of pilots with the Commissioners on a workload basis. We do not see a need for a change to the Code at this time because of the relatively constant workloads, and the proposed regulatory determination that the "number of pilots" in 54-15-130 means "full branch" pilots.

The Commissioners do not believe that the number of pilots has any impact on the price of pilotage. Pilotage charges are based upon the individual gross registered tonnages and deepest drafts of the vessels calling. It would not matter how many pilots there were licensed for the port; every vessel's fees are dependent upon its own dimensional parameters and the pilotage rate for those parameters as established by this Commission. If, on the other hand, the number of pilots were increased simply to allow more persons to participate in the profession, such a move would likely penalize the present level of industriousness exhibited by our pilots, and it would inhibit their self-rewarding efforts to promote intra-organizational efficiency. At some point, the fixed amounts of monies received and divided would be so diminished that there would be little incentive to attract the most qualified persons to partake of the extensive pilot training and qualification program that has yielded our port its outstanding safety record.

We concur that the minimal number of full branch pilots could be a matter of regulation but we see no discriminatory effect by having it in state law. The numbers of short branch pilots could vary depending upon the completion of training and qualification by apprentices.

Recommendation 2. Page A-8. The same regulations referred to above will address the age of pilots. The Commissioners believe that age is a factor in injuries and deaths to pilots based upon marine casualty incidents involving older licensed merchant marine officers. The Commissioners reserve the right to further examine this issue, with respect to the drafting of regulations that may establish a mandatory retirement age of 65. Such a regulation would be in keeping with such requirements for other similar professions, such as firemen, police and the military that have explicit requirements involving physical stamina and capability. Whenever a maximum age for retirement is so mandated, it follows in professions, which entail a long period of training and qualification, to also establish a maximum age at which selectees begin their careers in those professions. This is to ensure a suitable career length so as to justify the training expenditure in time and resources.

With respect to the issue of "reciprocity", the Commissioners disagree with the discussion in the Draft Report beginning on page A-4. The Commissioners adamantly oppose licensing any person as a state pilot who has not satisfactorily completed the prescribed apprentice training course. It is the satisfactory completion of this course that assures us that every state pilot licensed by us is qualified to serve safely as a pilot in the port of Charleston.

There appears to be an a concept that would equate the issuance of a federal pilot license with the issuance of a state pilot license. This is not an acceptable proposition.

Federal pilotage is directed toward the satisfaction of the minimal federal standards for licensure, which are published as federal regulations in Title 46 of the Code of Federal Regulations (46 CFR). State pilotage is directed to the satisfaction of optimal standards for training and qualification. Federal pilotage is not focused upon a limited geographic area for career performance. State pilotage is. Federal pilotage prepares a person to be a pilot by the issuance of a credential enabling that person to apply to a vessel owner for a job that requires pilotage licensure. State pilotage IS a job. There are NO training and qualification standards for federal pilot licensure, only those for minimal "experience" and route "familiarization". A person can become a federal pilot without any training or experience handling a large ocean going vessel. Many persons have. A South Carolina State pilot's licensure depends upon the satisfactory completion of a quality, USCG approved apprentice training course that incorporates directed hands-on training and soloing requirements on every imaginable size of ocean going vessel.

The concept of federal pilotage is based upon (1) experience on board vessels and (2) familiarization with specific geographic routes. Experience is addressed in 46 CFR 10.701; route familiarization in 46 CFR 10.705.

"Experience" is usually satisfied for masters and mates of ocean going vessels within the basic requirements for their master/mates licenses. The minimal experience for a third mate is three years service on board vessels in duties related to watchstanding in the wheelhouses and bridges of vessels. The alternative to three years service is the completion of approved courses of study, plus one year of that experience. For an original federal pilot license, the applicant must have 36 months experience in the deck department, 18 months of which must be performed in certain duties on the bridge, and 12 months of that service must be on coastal waters and estuaries (46 CFR 10.703(a)(1)). Completion of a USCG approved pilot training course can also satisfy "experience" requirements (46 CFR 10.703(c)).

One might presume that this "experience" gained on shipboard would be on large vessels if the person who cited such "experience" was to be allowed to pilot large vessels. The federal cut-off point for "large" vessels versus "small vessels" is 1600 gross tons (GT). A 1600 GT vessel is one with 160,000 cubic feet, as measured by the International Tonnage Convention, within its enclosed watertight structure. Typically, this is a ship about 200'-300' long, that requires less than 20' of water to float. The average size merchant ship calling at Charleston is over 25,000 GT, is over 600' long and requires 28' of water to float. A vessel over 1600 GT is said by federal standards to be in the unlimited tonnage class of "any gross tons".

"Route familiarization" requires the completion of a given number of round trips as an "observer" over a particular water route. For an original federal first class pilot license, this is between 12 to 20 round trips, the exact number to be specified by the locally responsible USCG official (46 CFR 10.705(b)). For an endorsement to a master/mate license, or an extension of route endorsement to another federal pilot license or endorsement, the number is 8 to 15 (46 CFR 10.705(c)).

Pilotage is not required for vessels less than 1600 GT. On such vessels, the masters and operators can serve as pilots (46 CFR 15.812(d)), and persons holding master or mates licenses of "any gross tons" do not need federal pilotage endorsements in order to serve as pilots of vessels less than 1600 GT.

While a person must have worked on a vessel for three years to meet the "experience" criteria, such "experience" need not have been on vessels over 1600 GT. When a person with "experience" on small vessels wants a federal pilot license for "any gross tons", such a person needs to double the number of "familiarization" trips, with half that number being on vessels over 1600 GT (46 CFR 10.711(b)). The required "familiarization" trips as an "observer" do not require any interaction between the vessel's pilot and the "observer". The "observer" need only be present in the wheelhouse or on the bridge (46 CFR 10.705(b)).

"Experience" and "familiarization" for "any gross tons" can be accommodated by combining the tonnage of a tug boat and its tow. Thus, a person can become a federal first class pilot for self-propelled vessels of "any gross tons" without ever serving on a self-propelled merchant vessel (46 CFR 10.711(d)).

Our Commission does not believe that such "experience" and "familiarization", as permitted by federal pilotage regulations, can be considered as credible substitutes for the training and qualification required of every candidate for licensure as a state pilot. Our apprentice training course is based upon hands-on training and mastery of every learning task in the curricula. Educational developmental technology defines the criteria for the selection of an appropriate method of training, depending upon the defined learning factors implicit in each learning task. These factors associated with the learning tasks of directing a vessel's movement dictate that the only acceptable instructional method is hand-on training. That means that there must be interaction between the tutor and the learner.

The Draft Report relates an analogy to medical licensure. We believe this analogy is flawed. Doctors and nurses practice their skills upon anatomically similar bodies, so it would not matter much whether the human body was in Los Angeles or Charleston. State pilots practice their skills on geographic bodies of water, every one different with many varieties of vessels and environmental conditions.

Pilots are both expert ship handlers and navigational experts on the local hydrography and marine environment. Given that an excellent shiphandler from another venue might bring those skills to this port, he/she would still need to become a LOCAL navigational expert before he/she could be an adequate pilot. On the other hand, it is unlikely that any person federally licensed as a pilot for Charleston, other than a qualified state pilot, possesses a scintilla of the basic shiphandling background over all our waterways necessary to safely handle the variety of self-propelled vessels that call at this port.

The Draft Report speaks of states that appear to offer reciprocity in accepting federal license experience. There is another concept of pilot training at work in those states, which generally include Florida, the Gulf and Pacific Coasts. That method may be referred to as "deputy" training, as opposed to "apprentice" training, even though deputies are referred to as apprentices in some states. In order to become a deputy, the applicant must usually take a test and possess a master, oceans, any gross tons license with a federal pilotage endorsement. The operable federal license is the unlimited master's license, NOT the federal pilotage endorsement. The apprentice system, as practiced in most Atlantic Coast ports treats successful applicants as novices, even though they may have federal master/mate licenses of any gross tons.

We believe a microscopic examination of the Battelle Report will reveal that about 75% of all marine casualties involving state pilots occurred in the Eighth Coast Guard District, which embraces the Gulf of Mexico. Further, the port of Tampa has sustained a substantial number of serious marine casualties, so many that the Coast Guard had to regulate marine traffic when there were two competing state associations.

We are confident that the apprentice system is superior to the deputy system because of the depth of local training and qualification it affords. If an applicant with a master, ocean, any gross tons license, with a pilotage endorsement, were to be taken as an apprentice at Charleston, he/she would still be required to satisfactorily complete the apprentice training course in order to assure us that he/she had navigationally mastered Charleston Harbor to qualify as a pilot. It is possible that such a person might complete the course in less than three years, but our experience with other licensed officers, who have served apprenticeships, does not present a significant mastery learning advantage over other recent, un-licensed apprentices.

We agree that the three year apprentice term requirement, as established by state law, might seem unnecessarily rigid. We believe, however, that a minimal term should be required; say, "a term not less than two years, plus satisfactory completion of the approved apprentice training course."

Our Commission will revise our POLICIES AND PROCEDURES MANUAL to reflect the direction that previous federal license experience shall be considered when applicants are selected.

Recommendation 3. Page A-8. We believe there would be some merit in authorizing the Commissioners at Port Royal and Georgetown to have the authority to grant emergency or temporary licenses to pilots trained at other South Carolina ports under approved apprentice training courses, but only after proper local qualification and certification that would require supervised solos. This Commission believes the regulatory approach at Charleston, with respect to the number of additional short branch pilots authorized, would make such temporary and emergency licensure at Charleston moot.

Recommendation 4. Page A-8. This Commission will revise its procedures relative to the selection and termination of apprentices.

Recommendation 5. Page A-8. The Commissioners believe that this section of the Code regarding a pilot majority recommendation for licensure, while factual, might be unnecessary. On the other hand, we see no reason to have it removed. We now require the satisfactory completion of an approved apprentice training course curriculum that involves observational mastery learning in three modes, the third mode being the demonstration of mastery during supervised solos on every major route, day and night, ebb and flood, on every variety of vessel size and draft. If an apprentice can not satisfy the curriculum requirements, he/she will not solo satisfactorily and, thus, can not complete the course.

Recommendation 6. Page A-9. This Commission sees the advantage of requiring pilot boat ownership by the individuals using them for transportation. Such ownership of expensive, but absolutely necessary, assets assures us that the state pilots are financially responsible and will properly maintain such assets in a safe and serviceable condition. Likewise, we believe that every state pilot in Charleston should be committed to his professional calling as a pilot, and not be distracted with other conflicting business interests. In both the boat ownership issue and the other business issue, we believe that regulation might be viewed as being preferable to statute. Again, we see that being in the statute does no harm other than to reinforce our proposed regulation.

Recommendation 7. Page A-11. This Commission recognizes the degree of administrative improvement being brought about by this Legislative Audit Council review of our organization. The thoroughness and professionalism of the auditors is truly appreciated. Having enabled this Commission to advance and improve to the level we are about to achieve, we would see little additional purpose or benefit in undergoing another sunset review.

Recommendation 8. Page A-12. The Commission will reimburse the S. C. State Ports Authority for all its administrative costs incurred in support of our operations.

Recommendation 9. Page A-15. This Commission will revise its rate making procedure. We will include expenses attributable to federal pilotage insofar as they are reported as a portion of total expenses. The same applies to pilot income from

federal pilotage. This Commission is forbidden by federal law (46 USC 8502) from regulating federal pilotage. We do not believe we have a right to inquire into federal pilotage performed by state licensed pilots or by any other federal pilot.

Such expenses and incomes, identified as attributable solely to federal pilotage, could provide otherwise private and proprietary information about the state pilots organization to other federal pilots competing against the state pilots for that work. That would be an invasion of the pilots' privacy in an area over which this Commission has no jurisdiction.

We do not believe that individual pilot income is relevant in the rate setting process. Pilot income is based upon a division of the balance of revenues remaining after expenses are paid. Gross pilot revenue is fixed by our rates and the pilots' Navy contract. The variables in their income are; (1) the total gross tonnage and draft feet of vessels calling as applied to the Commission rates, (2) the number of Navy movements handled applied to the Navy contract price, (3) miscellaneous penalty fees and charges, (4) the cost of pilot support services, administrative expenses, insurance, taxes, and employee salaries, (5) preventive maintenance, planned overhauls, and unexpected repair costs, (6) boat fuel and overland transportation costs, (7) interest earned on deposits and interest paid on loans, and (8) the number of pilots dividing the balance.

If the number of pilots is sufficient to handle the workload, and pilot fatigue is not a factor, the pilots should be encouraged to maximize their individual incomes through their industriousness and willingness to effect economies through efficient operation. Most of the base of their income is fixed by Commission action. If the Commission-set rates are fair and reasonable, when compared with other port pilotage rates and other appropriate comparison criteria, then the base for their income will be just. It is no more reasonable to attempt to regulate the division of that base by auditing the individual incomes of pilots than it would be to examine their personal investments, inheritances, and contributions to society. We believe that regulated private sector banking and utilities organizations are not required to reveal the incomes of their corporate executives; those salaries and "perks" are included in the category of "expenses".

Recommendation 10. Page A-17. This Commission will hold meetings on a quarterly basis.

Recommendation 11. Page A-17. The Commission has taken action to include its phone number and address in the public and state telephone directory.

Recommendation 12. Page A-20. The Commission will initiate a review of their examinations for licensure.

Recommendation 13. Page A-20. All future written licensure examinations will be approved by the Commission prior to their administration. Every candidate for a licensure examination will be required to demonstrate, by submission of a history of his/her performance under the current license, a record of on-board experience.

Recommendation 14. Page A-21. The licensing fees will be a part of the regulatory package contemplated for drafting in July 1990.

Polygraph Examiners Program

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Introduction

Summary

The Polygraph Department of the State Law Enforcement Division (SLED) administers the Polygraph Examiners Program. After reviewing the laws and operations of the Polygraph Examiners Program, we conclude that there is a public need for the regulation of polygraph examiners. However, we found several areas which need improvement.

Background

South Carolina began licensing polygraph examiners with the enactment of the Polygraph Examiners Act in 1972. This act established that the regulation of the polygraph profession would be administered by the State Law Enforcement Division.

A polygraph examiner is defined as a person who purports to be able to detect deception or verify truth of statements through instrumentation or the use of a mechanical device. In South Carolina, qualifications for licensure include a bachelor's degree or high school graduate with five consecutive years of active investigative experience. Applicants must also graduate from an approved polygraph examiners course and complete a six month internship. If the applicant does not graduate from a polygraph examiner's course, an internship of not less than one year is required. The applicant must also pass an examination and furnish evidence of a surety bond or insurance policy in the amount of \$5,000.

All of the southeastern states, Alabama, Georgia, Florida, Kentucky, Mississippi, North Carolina, Tennessee and Virginia, regulate polygraph examiners. South Carolina has a reciprocal agreement with each of these states.

The administering authority for the southeastern states ranges from an advisory council in Florida and Virginia to a regulatory board in Alabama, Georgia, Mississippi, North Carolina and Tennessee. Kentucky regulates polygraph examiners through a state agency.

The federal government passed the Employee Polygraph Protection Act of 1988 restricting the use of polygraph

examinations in the private sector (see p. B-9). Since the passage of this act, the number of licensed polygraph examiners in South Carolina decreased from 132 in FY 87-88 to 80 in FY 88-89. According to a SLED official, 60 polygraph examiners were licensed in this state as of March 1990.

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Polygraph Examiners Program does not regulate fees charged for polygraph services. Therefore, it has no direct impact on consumer prices. Polygraph examiners pay application and license fees. Fees charged range from \$25 to \$50 (see Appendix B-I). We found no measurable cost increase or reduction as a result of the licensing program.

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

Regulation of polygraph examiners in South Carolina should continue because it provides assurance that polygraph examiners have a minimal level of training and experience in conducting polygraph exams. Since polygraph examiners administer tests which are used as an investigative aid and which can assist in determining the guilt or innocence of a person, incompetent performance can result in harm to the public.

The current training and education required helps to ensure that polygraph examiners are receiving academic knowledge as well as practical experience as interns before becoming licensed. All eight southeastern states (Alabama, Georgia, Mississippi, North Carolina, Tennessee, Florida, Kentucky and Virginia) also license and regulate polygraph examiners. South Carolina has reciprocal agreements with each of these states which it would lose if deregulated.

Deregulation would eliminate examination, education and internship requirements for testing the competency of polygraph examiners. Anyone wishing to conduct polygraph examinations could do so if the industry were deregulated. As a result, the public would have less protection from individuals who may administer polygraph examinations in a fraudulent, inept or unscrupulous manner. However, because the federal government has restricted the use of polygraph examinations, the number of licensees has declined (see p. B-9). In the future, the need for regulation could decrease and regulation may no longer be warranted.

Recommendations

The General Assembly may wish to consider removing the Polygraph Examiners Program from the sunset review cycle.

SLED should periodically review the Polygraph Examiners Program to determine if regulation should continue.

Determine the overall costs, including manpower, of the agency under review.

In addition to administering the licensing program for polygraph examiners, the polygraph department is also responsible for administering polygraph examinations for law enforcement agencies and maintaining quality control of these examinations. No separate operating budget has been established for the Polygraph Examiners Program.

All revenue collected by the polygraph department is generated by the licensing program. SLED officials estimate that the licensing program accounts for 1% of the operating expenditures of that department. SLED officials also estimate that two employees of the polygraph department spend 1% and 5% of their time on the licensing program.

There is no separate appropriation for the Polygraph Examiners Program. Therefore, it is not required to comply with an Appropriation Act proviso which requires regulatory boards to collect 115% of their appropriation.

The following table outlines the Polygraph Examiners Program's revenues and expenditures.

Table 3B.1: Source of Revenues and Expenditures

	FY 85-86	FY 86-87	FY 87-88	FY 88-89	FY 89-90 (estimated)
Revenues					
License and Registration Fees	\$8,475	\$8,975	\$7,875	\$4,300	\$3,625
Total	\$8,475	\$8,975	\$7,875	\$4,300	\$3,625
Expenditures^a					
Estimated Expenditures	\$1,675	\$1,739	\$1,709	\$1,714	\$1,719
Total	\$1,675	\$1,739	\$1,709	\$1,714	\$1,719

^aExpenditures include personal services, contractual services, supplies and materials, fixed charges and contributions, travel and equipment.

Sources: Polygraph Department Director and SLED records.

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

In 1984, we found that the Polygraph Examiners Program should maintain a policies and procedures manual and include a policy for periodic inspections of polygraph examiners' premises. Our review of the program reveals that no policies and procedures have been developed and there is no inspection program.

Policies and Procedures Manual

The Polygraph Examiners Program does not have a policies and procedures manual as required by §1-23-140 of the South Carolina Code of Laws. There is one policy included in SLED's Policies and Procedures Manual entitled "Polygraph Examinations" which outlines the use of polygraphs by SLED. However, no policies address the handling of complaints, the process by which licensee files are kept current, the inspection of polygraph examiners' premises, and the process by which suspensions and revocations of licenses are determined and handled.

Inspection System

An inspection form was created as a result of the 1984 audit; however, no inspections of licensed polygraph examiners' premises have been conducted.

Inspections are needed to ensure polygraph examiners comply with §40-53-40 and §40-53-140 of the South Carolina Code of Laws. Section 40-53-40 addresses minimum instrumentation requirements of polygraph instruments. This law requires that polygraph instruments used to detect deception or verify the truth of statements be properly calibrated. Section 40-53-140 states that a license must be displayed at the polygraph examiner's place of business. Neither of these requirements can be verified without inspections.

Recommendations

Polygraph Examiners Program officials should develop and maintain a policies and procedures manual.

Polygraph Examiners Program officials should develop and implement a policy requiring periodic inspections.

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

The Polygraph Examiners Program is administered by the polygraph section of the State Law Enforcement Division. No regulatory board or advisory council regulates the practice of polygraph examiners.

In 1984, we recommended the establishment of an advisory council for this program; however, an advisory council was not formed. An advisory council consisting of members of law enforcement, the polygraph profession and the public could assist in the complaint process and the disciplinary procedures affecting polygraph examiners who violate program statutes or regulations. Without an advisory council, SLED officials are without outside input and oversight into the administration and regulation of the program.

According to an official of the American Polygraph Association, 32 states regulate polygraph examiners through state certification or licensing laws. Of eight southeastern states, two (Florida and Virginia) have advisory councils while five (Alabama, Georgia, Mississippi, North Carolina and Tennessee) have regulatory boards. One state (Kentucky) has neither a board nor an advisory council.

Recommendation

SLED may wish to consider creating an advisory council with public members, law enforcement and members of the profession to assist and advise in the operation of the Polygraph Examiners Program.

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The Polygraph Examiners Program does not duplicate the functions or services administered by any other state, federal or other agency. Two areas of additional potential oversight of polygraph examiners, however, are the Employee Polygraph Protection Act of 1988 and the registration of polygraph examiners with the clerk of court.

Employee Polygraph Protection Act of 1988

The Employee Polygraph Protection Act of 1988 (EPPA), which became effective December 27, 1988, prohibits private employers from using lie detector tests either for pre-employment screening or during the course of employment. The EPPA does not apply to federal, state or local government employers.

An exemption to the EPPA allows employers to administer polygraph examinations during investigations related to economic loss or injury. The employer must have a reasonable suspicion of the employee and the employee must have had access to the property that is the subject of the investigation. Other exemptions apply to employers authorized to manufacture, distribute or dispense controlled substances and employers providing security services.

An official of the U.S. Department of Labor stated that the main purpose of the law is to prevent employers from randomly subjecting employees to polygraph exams and to prevent polygraph exams from being used as pre-employment screening tests. Any enforcement is conducted in response to complaints. An official with SLED stated that the enforcement is handled by the federal officials.

Since the passage of this law, the number of licensed examiners in South Carolina has decreased from 132 in FY 87-88 to 80 in FY 88-89. Also, as of March 1990, 24 (40%) of the licensed polygraph examiners worked for law enforcement agencies such as police and sheriff's departments.

**Registration with County
Clerks**

Section 40-53-200 of the South Carolina Code of Laws requires polygraph examiners to register with the clerk of court in each county where he maintains a business address. SLED has not enforced this requirement and two county clerks' offices we contacted stated that they do not enforce this requirement. We could find no justification for requiring polygraph examiners to register with county clerks of court.

Recommendation

The General Assembly may wish to consider deleting §40-53-200 of the South Carolina Code of Laws.

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

We found that there has been improvement in the handling of complaints; however, further procedural changes are needed.

In 1984, we recommended that the program develop policies and procedures to handle complaints along with a standard complaint form and log.

No policies and procedures regarding complaint handling have been developed (see p. B-6). Program officials, however, created a standard form which is currently being used. A complaint log was created but is not being used.

Our review of the Polygraph Examiners Program's central complaint file revealed documentation of four complaints. Three of these complaints were received since the 1984 audit; however, only two were documented on the standard complaint form. An official of the polygraph department investigated these two complaints and determined the allegations to be unfounded. In the third case, there was no written documentation that the complaint was investigated; however, according to a SLED official, they investigated but found no violation.

Recommendations

The Polygraph Examiners Program should develop policies and procedures which outline the handling of complaints.

All complaints should be logged on the standard complaint form.

The complaint log should be revised to denote the date of resolution.

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

We reviewed the Polygraph Examiners Program and found the lack of compliance with state laws in several areas. These problems are discussed in the following sections.

Regulations

SLED has not promulgated regulations for the Polygraph Examiners Program which began in 1972. State law requires SLED to promulgate regulations.

Section 40-53-50 of the South Carolina Code of Laws states, in part:

The Division shall issue regulations not inconsistent with the provisions of this chapter for the administration and enforcement of this chapter . . .

In addition, Section 40-53-130 of the South Carolina Code of Laws states:

Fees for an original polygraph examiner's license, internship license, duplicate license, and fees for renewal and extension of the licenses must be set by the Division by regulation.

Without regulations governing enforcement and administration of the polygraph act, SLED has less enforcement authority.

Since state law requires that "Fees . . . must be set by the Division by regulation" and there are no regulations, the program does not have an approved schedule of fees.

Regulations can be promulgated to establish fees, a code of ethics for practitioners, general provisions and rules of practice. The lack of regulations might lead to ambiguous and inconsistent implementation of the licensing program.

Recommendation

SLED should promulgate regulations for the Polygraph Examiners Program, according to the Administrative Procedures Act. Regulations should establish a schedule of fees and administrative and enforcement practices.

Expiration of Bonds

The polygraph department has not ensured that licensees maintain current bonds. Section 40-53-70 (i) of the South Carolina Code of Laws states that an applicant for a polygraph examiner's license must furnish to the Division evidence of a surety bond or insurance in the amount of \$5,000 prior to the issuance of a license. This is required to ensure that in the event any judgment is ordered against a licensee for any wrongful or illegal acts committed in the course of his examinations, the examiner is financially protected. Although the statute does not specifically state that the examiner has to maintain a bond for the duration of licensure, SLED has interpreted the statute to require licensees to maintain a current bond or insurance.

We reviewed a random sample of 60 of 85 polygraph examiner licensee files in February 1990. There is no evidence in 21 (35%) files that the licensee had a current bond. Two individuals with expired bonds are employed by the polygraph department.

The Polygraph Examiners Program does not have a written procedure addressing the notification of licensees of an impending bond expiration.

Recommendations

The General Assembly may wish to consider amending §40-53-70 (i) and §40-53-160 to specifically require all polygraph examiners to maintain a surety bond or insurance in the amount of \$5,000 as a condition of continuation of licensure.

SLED should develop and implement written procedures to ensure that all licensed polygraph examiners maintain a current bond.

If an examiner's bond expires, written notification should be mailed advising that the licensee may no longer administer polygraph examinations in South Carolina until all requirements for licensure are met.

Fingerprint Cards

SLED records do not indicate that background checks are conducted for all applicants. No applicant for a polygraph examiner's license may be approved if the applicant has been convicted of a felony or a misdemeanor involving moral turpitude. SLED requires all applicants to submit a fingerprint card to be used in their background investigation. According to a SLED official, the processing of the fingerprint cards is their method to determine that the applicant meets this requirement for licensure. No regulations or written policies address this requirement.

We reviewed a random sample of 60 of 85 licensee files. Fifteen (25%) of the 60 files did not contain evidence that SLED conducted a background investigation. Eight of the 15 files contained fingerprint cards but there was no evidence that the card had been processed. The remaining 7 of the 15 files did not contain a fingerprint card. Two of the seven are SLED employees and documentation of background investigations may be maintained elsewhere.

Recommendation

SLED should require the submission of fingerprint cards for all polygraph examiner applicants. Each licensee file should contain evidence that the fingerprint cards have been processed and the results of the investigation.

**No Record of Exam
Administered**

According to §40-53-70 (h) of the South Carolina Code of Laws, all applicants must pass an examination conducted by the division to determine competency to obtain a polygraph examiner's license. Six (10%) of the 60 licensee files we reviewed contained no record of SLED administering an exam for the applicant. None of these applicants was applying for a license through a reciprocal agreement. Each of these applicants was granted a license.

Recommendation

SLED should ensure that all applicants have passed an examination as required in §40-53-70 of the South Carolina Code of Laws before granting a license.

Consent Form

Section 40-53-100 (a) of the South Carolina Code of Laws states, in part:

Each nonresident applicant for an original license or a renewal license shall file with the Division an irrevocable consent that actions against such applicant may be filed in . . . this State . . .

Of the 60 licensee files we reviewed, 28 (47%) of the examiners were nonresidents of South Carolina. None of the files contained the required consent.

According to a SLED official, this section of the statute has not been enforced because SLED received a verbal opinion from the South Carolina Attorney General's Office stating that the filing of a consent was unnecessary.

Recommendation

SLED should enforce §40-53-100 (a) of the South Carolina Code of Laws or recommend that the General Assembly consider deleting this section.

Schedule of Fees FY 88-89

	Fee
Initial Application Processing Fee	\$50
Examiner's License (Original/Renewal)	50
Internship License (Original/Extension/Renewal)	25
Duplicate License (Examiner/Internship)	25

Source: SLED officials.

Polygraph Examiners Program Comments

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

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June 8, 1990

TO: Director Schroeder

FROM: Lt. Johnny W. Hartley

REFERENCE: Legislative Audit Council's Sunset Review
Polygraph Department

In response to the Legislative Audit Council's Sunset Review, the South Carolina Law Enforcement Division Polygraph Department responds to the following recommendations.

1. Legislative Audit Council's Recommendation: Polygraph Licensing Program officials should develop and maintain a policies and procedures manual.

The South Carolina Law Enforcement Division Response: The SLED Polygraph Department will develop a policies and procedures manual in compliance with Section 1-23-140 of the South Carolina Code of Laws.

1. Legislative Audit Council's Recommendation: Polygraph Licensing Program officials should develop and implement a policy requiring periodic inspections.

The South Carolina Law Enforcement Division Response: In 1988, a Productivity Management Study was conducted in the South Carolina Law Enforcement Division Polygraph Department. This study showed that the Polygraph Department is currently understaffed by at least one examiner. In order to conduct inspections on licensed examiners, the Polygraph Department would need at least two more examiners.

2. Legislative Audit Council's Recommendation: SLED may wish to consider creating an advisory council with public members, law enforcement and members of the profession to assist and advise in the operation of the Polygraph Licensing Program.

The South Carolina Law Enforcement Division Response: The South Carolina Law Enforcement Division Polygraph Department is of the opinion that the South Carolina Polygraph Examiners' Act Section 40-53-10 was created with the intent of the South Carolina Law Enforcement Division being responsible for upholding this statute.

3. Legislative Audit Council's Recommendation: The Polygraph Licensing Program should develop policies and procedures which outline the handling of complaints. All complaints should be logged on the standard complaint form. The complaint log should be revised to denote the date of resolution.

The South Carolina Law Enforcement Division Response: The South Carolina Law Enforcement Division Polygraph Department is at present time in the process of developing policies and procedures for the handling of complaints. In agreement with the Legislative Audit Council, the complaint log will be revised to denote the date of resolution.

4. Legislative Audit Council's Recommendation: SLED should promulgate regulations for the Polygraph Licensing Program, according to the Administrative Procedures Act. Regulations should establish a schedule of fee and Administrative and enforcement practices.

The South Carolina Law Enforcement Division Response: The South Carolina Law Enforcement Division Polygraph Department is at present time in the process of promulgating regulations for the Polygraph Licensing Program with the assistance of the South Carolina Attorney General's Office.

5. Legislative Audit Council's Recommendation: The General Assembly may wish to consider amending Section 40-53-70 (i) and Section 40-53-160 to specifically require all polygraph examiners to maintain a surety bond or insurance in the amount of \$5,000 as a condition of continuation of licensure.

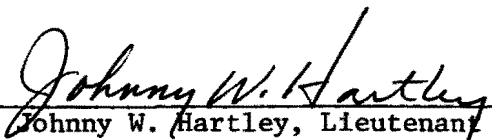
The South Carolina Law Enforcement Division Response: The South Carolina Law Enforcement Division Polygraph Department concurs with the Legislative Audit Council's recommendation to specifically require all polygraph examiners to maintain a surety bond or insurance in the amount of \$5,000 as a condition of continuation of licensure.

6. Legislative Audit Council's Recommendation: SLED should require the submission of fingerprint cards for all polygraph examiner applicants. Each licensee file should contain evidence that the fingerprint cards have been processed and the results of the investigation.

The South Carolina Law Enforcement Division Response: The South Carolina Law Enforcement Division Polygraph Department maintains fingerprint cards on all polygraph examiners since 1977. The files that do not contain fingerprint cards are files belonging to SLED examiners or police applicants. Since SLED conducts its own background, along with fingerprint cards for all commissioned agents, no fingerprint cards are necessary for SLED polygraph examiners.

7. Legislative Audit Council's Recommendation: SLED should ensure that all applicants have passed an examination as required in Section 40-53-70 of the South Carolina Code of Laws before granting a license.

The South Carolina Law Enforcement Division Response: Section 40-53-70 does not specifically require all applicants to pass an examination.


Johnny W. Hartley, Lieutenant
Polygraph Department
South Carolina Law Enforcement Division

JWH:amw

Private Detective and Private Security Agencies Program

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Introduction

Summary

The licensing program for private detectives and private security companies is administered by the regulatory department of the State Law Enforcement Division (SLED). After reviewing the laws and regulations of the Private Detective and Private Security Agencies Program (PD/PS), we conclude that the portion of the program addressing private detectives should be discontinued. However, the private security portion of the program is needed and should be continued in order to protect public safety and welfare.

Background

The regulatory services department of the State Law Enforcement Division was created in 1972 for the purpose of administering the licensing program for private security and private detective companies. There is no regulatory board or advisory council. SLED performs background investigations on all applicants, issues licenses and registrations, investigates complaints and performs inspections of all security and private detective businesses. As of FY 88-89, there were 506 businesses licensed and 13,651 individuals registered under the act. The regulatory services department also handles the administration of retail pistol dealers, contraband weapons and dealers in precious metals.

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Private Detectives and Private Security Agencies Act does not set prices to be charged by licensees for their services; therefore, it has no direct influence on consumer prices.

The PD/PS Act does require each security guard to be trained and registered. Each company is required to have a training officer, trained at the Criminal Justice Academy, to give four hours of instruction to each unarmed guard. Armed guards are required to have eight hours of training, including firearm instruction.

The Governor's Subcommittee on Private Security is studying the possibility of increasing the required number of training hours to 24 for unarmed guards and 40 for armed guards. It is difficult to estimate an industry-wide turnover rate; however, an official with the American Society for Industrial Security estimates that the turnover rate for certain areas, such as contract security, is high. An increase in the amount of training mandated by the state coupled with a high turnover rate could result in an increase in the cost of services to consumers.

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

After reviewing the laws and regulations governing the Private Detective and Private Security Agencies Program (PD/PS), we conclude that the part of the program addressing private detectives should be discontinued. However, the private security portion of the program is needed and should be continued in order to protect public safety and welfare.

Private Detectives

Functions of a private detective include investigating individuals, thefts and fires. The job also includes securing evidence to be used in a court of law, process serving and other investigative functions.

Private detectives in South Carolina are prohibited by law from carrying a firearm. In addition, they have no arrest powers. While state law requires individuals registered as private detectives to be trained, SLED has not enforced the training requirement (see p. C-12). An applicant for a private detective company license must have two years experience as a private detective or in a related field, but is not required to pass an examination or meet any educational requirements. Individuals registered as private detectives are not required to have any investigative experience.

A review of the seven southeastern states found that three states (Alabama, Mississippi and Tennessee) regulate private detectives on a local level by requiring registration with county officials or obtaining a business license. All seven southeastern states allow private detectives to carry firearms after obtaining a permit through the appropriate officials. None of these states grant private detectives arrest powers any greater than those of a private citizen.

Deregulation of private detectives would not pose more of a threat to the public welfare or safety than that posed by any other nonregulated business. A private detective company could still be required to obtain a business license in the city or county in which it will be conducting business.

In the absence of regulation by SLED, complaints involving private detectives could be handled by the Department of Consumer Affairs.

Private/Premise Security

Because registered security guards perform quasi-law enforcement functions and may be granted arrest powers and permits to carry firearms, state regulation of this industry is in the public interest.

A Committee on National Security Companies, Inc. (CONSCO) publication stated that as of January 1987, 37 states, including many of the southeastern states, had statutes regulating the security industry.

Currently, all private security businesses must have a training officer who has attended SLED's training seminar in order to train each guard employed by that company. Each unarmed guard must receive a minimum of four hours of training. The Governor's Subcommittee on Private Security is also considering the need to increase training in this area.

State law gives security guards arrest powers equal to those of sheriffs on the property they are patrolling. State law also allows for any licensed or registered security officer to obtain a permit to carry a firearm after presenting proof, to SLED, of proficiency in the use of firearms and a minimum of four hours of classroom instruction in addition to the initial four hours of general training. Permits may also be obtained to carry a concealed weapon.

The absence of regulation for private security could pose a threat to public health, safety and welfare since state law allows these individuals arrest powers and firearm privileges.

Recommendations

The General Assembly may wish to consider terminating the portion of the Private Detective and Private Security Agencies Program which pertains to the regulation of

private detectives. The regulation of private security and premise security should continue.

If regulation of private detectives is continued, the General Assembly may wish to consider amending state laws to set minimum competencies for licensure. In addition, recommendations addressing the private detective portion of the program should be implemented.

Determine the overall costs, including manpower, of the agency under review.

The licensing program for private detectives and private security companies is administered by the regulatory department of the State Law Enforcement Division. There is no separate operating budget for the PD/PS program. SLED officials estimate that the PD/PS program accounts for 80% of the expenditures and 90% of the revenues generated by the regulatory department (see Table 3C.1). Since there is no separate appropriation for the PD/PS program, it is not required to comply with an Appropriation Act proviso which requires all regulatory boards to collect 115% of their appropriation. However, the Private Detective and Private Security Agencies Program generates revenues sufficient to meet this requirement. In addition to the regulatory department, other departments within SLED provide support to the PD/PS program. These include the finance department and the records department.

We estimate that the equivalent of approximately nine full-time employees work on the PD/PS program. Three agents and three administrative specialists in the regulatory department are assigned to the PD/PS program. The equivalent of two more employees in the regulatory department work on the program. In addition, support from the records department, finance department and general law enforcement agents amounts to at least one more employee.

Table 3C.1: Source of Revenues and Expenditures

	FY 85-86	FY 86-87	FY 87-88	FY 88-89	FY 89-90 (estimated)
Revenues					
License and Registration Fees	\$360,286	\$360,799	\$439,488	\$487,362	\$495,770
Training	9,180	8,520	7,560	7,620	7,860
Total	\$369,466	\$369,319	\$447,048	\$494,982	\$503,630
Expenditures^a					
Estimated Expenditures	\$262,204	\$291,903	\$296,650	\$327,208	\$477,293
Total	\$262,204	\$291,903	\$296,650	\$327,208	\$477,293

^aExpenditures include personal services, contractual services, supplies and materials, fixed charges and contributions, travel and equipment. Expenditures for the PD/PS program are estimated at 80% of the total expenditures for the Regulatory Services Department. Sources: Regulatory Department Supervisor, SLED Records, State Budget and Control Board State Budget documents.

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

The administration of the PD/PS program has improved since the 1984 audit. As we recommended in the 1984 report, the department has established policies and procedures governing its operations. In addition, we recommended that the fees for premise and private security companies be made equal. In 1985, the General Assembly amended state law to make the fees equal. However, a recommendation that fees for the PD/PS program be set by regulation, rather than by statute, has not been implemented. Another recommendation which has not been implemented is the employment of investigative clerks for the PD/PS program. The following outlines other areas where administrative efficiency could be improved.

Inspections

We reviewed a random sample of 143 of 481 inspection files from the listing of all licensed private security companies, premise security and private detective companies as of October 1989. For each sample file, all inspections conducted in the previous five years were reviewed. Of the 143 inspection files we reviewed, 21 (15%) had violations noted for the most recent inspection. Violations found included discrepancies in guard registration, continued employment of persons for 30 days after expiration of registration certificate, failure to post license certificate in a conspicuous place and failure to notify the division within 5 days of termination of registered employees. In the 21 inspections where violations were found, we could find no evidence that the inspections were followed-up on to ensure that the violations were corrected. By not following up after an inspection, the effectiveness of the inspection program may be reduced.

Investigative Clerks

Agents assigned to the PD/PS program conduct local background investigations while general law enforcement agents, who are not assigned to the PD/PS program, conduct the background investigations for applicants located in the geographical area in which they are assigned. Background investigations include contacting the local law enforcement authorities for information on the applicants, checking county records of the clerk's office, checking criminal records and records through the South

Carolina Department of Highways and Public Transportation and verifying applicant's previous training experience. All of these functions, as well as inspections and the investigation of complaints, could be handled by investigative clerks.

An official of the Private Protective Services Board in North Carolina stated that three agents who had previously been assigned to the Private Protective Services Board were phased back into the field and replaced by six investigators. According to this official, the annual salary of an investigator in North Carolina is approximately \$13,000 lower than that of an agent; therefore, more investigators can be used at a lower cost to the program. These investigators conduct background investigations, investigate complaints and conduct audits/inspections.

SLED agents outside the geographical jurisdiction of the regulatory department could continue to conduct the requisites of the background investigation which must be done person-to-person. However, investigative clerks could be hired for the PD/PS program by transferring regulatory agents into general law enforcement, as general law enforcement agents leave or retire.

Recommendations

SLED should consider creating a policy stating that all licensed private security, premise security and private detective companies be inspected annually. A follow-up procedure to ensure that violations found during the inspection are corrected should also be considered.

SLED should consider employing investigative clerks for the Private Detective and Private Security Agencies Program.

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

The Private Detective and Private Security Agencies Program is administered by SLED. There is no regulatory board or advisory council for private detectives and private security companies. In 1987, a subcommittee of the Governor's Committee on Criminal Justice Crime and Delinquency was formed to examine the statutes relating to private detectives and private security companies. The subcommittee is composed of representatives from SLED, other law enforcement agencies, the Legislature and the industry. One issue the subcommittee is examining is the creation of an advisory council.

In 1984, we recommended the creation of an advisory council. In a survey of seven other southeastern states, we found that two states (Virginia and Florida) have advisory councils for their PD/PS programs. Tennessee has an advisory council for private security only. Georgia and North Carolina have regulatory boards which administer their PD/PS programs. In Alabama and Mississippi, private detectives and private security are regulated locally. Officials with SLED and the Governor's Subcommittee on Private Security favor the creation of an advisory council so that the industry can have input into regulation. Public involvement in the regulatory process promotes accountability and public confidence.

We also recommended in 1984 that the PD/PS program be listed in the public telephone directory. Such a listing would allow the public easier access for obtaining information about the program and for filing complaints.

Recommendations

An advisory council for the Private Detective and Private Security Agencies Program should be created with representation from the industry, law enforcement and the public.

The Private Detective and Private Security Agencies Program should be listed separately under the regulatory division's address and telephone listing in the public telephone directory.

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The Private Detective and Private Security Agencies Program does not duplicate the services, functions or programs of any other state or federal governmental agency.

Local governments may, under §40-17-150 of the Code of Laws of South Carolina, impose local regulations on security companies and employees. Local governments may also require a business license to operate a private detective or private security business in their city or county.

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

The regulatory department of the State Law Enforcement Division is responsible for handling complaints filed against private detective and private and premise security companies. In addition, the department handles complaints filed against other areas of the regulatory department such as retail pistol dealers and contraband weapons. All complaints handled by the department are entered on a central complaint log.

We reviewed a random sample of 99 (51%) of 195 complaints listed on the complaint log between June 3, 1985 and October 17, 1989 and found 88 (89%) of the 99 complaints involved the PD/PS program. The most common complaints involved security companies failing to register and/or train their security guards and unprofessional practices by private investigators. Between January 1986 and August 1989, the department revoked 1 license, suspended 2 licenses and placed 11 companies on probation. Fines totaling \$5,800 have also been levied.

As recommended in our 1984 report, the department has established a policy regarding the handling of complaints, has established a complaint log and designated individuals to log complaints. However, the department does not notify all complainants of the resolution of complaints. Department policy is to notify complainants of the resolution, ". . . if appropriate."

In 41 (47%) of the complaints reviewed, we found no evidence that the complainant had been informed of the complaint resolution. In addition, department policy requires that an initial progress report on the complaint be filed within 18 days. In 44 (50%) of the complaints reviewed, the initial progress report was not filed within the required 18 days. Increasing efforts to notify complainants of case resolution and improving compliance with department policy requiring initial progress reports within 18 days would increase the efficiency of the complaint process.

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

We reviewed the Private Detective and Private Security Agencies Program and found no evidence of violation of any state, federal or local statutes except as noted below.

In 1984, we recommended that the General Assembly consider amending §40-17-120 of the South Carolina Code of Laws to either restrict individuals with a combination private detective and private security license from obtaining a permit to carry a firearm or to allow private detectives to carry firearms. No amendments were made to this section; however, according to a SLED official, companies having a combination license may obtain dual registration but as *unarmed* security only. A review of the 40 combination license holders as of December 1989 revealed that none of the combination private detective/security license holders had been issued permits to carry a firearm.

Training

SLED has not enforced state law which requires private detectives to have a training officer and a training program. According to §40-17-50 (6), all private detective businesses must have a competent training officer and an adequate training program. In addition, §40-17-80 requires that all applicants for registration complete an acceptable training program. According to a SLED official, §40-17-80 has not been interpreted as applying to private detectives since the training offered is geared toward private security officers and proper arrest procedures. Accordingly, §40-17-50 (6) was not enforced for private detectives.

A random sample of 143 of 481 inspection files of premise security, private security and private detective businesses revealed that for the 38 private detective companies in the sample, the section of the inspection form regarding the requirement of a training officer for the company was either left blank or marked as "no violation."

Recommendation

Applicable training for private detectives should be offered and enforced. If SLED determines that training for private detectives is not necessary, it should recommend to the General Assembly that state law be amended to delete training requirements.

Schedule of Fees FY 88-89

	Fee
Licenses^a	
Private Security Companies	\$200
Private Detective Companies	200
Combination Private Detective and Private Security Companies	500
Premise Security	25
Registrations^a	
Private Security Unarmed	\$25
Premise Security Unarmed	25
Private Security Armed ^b	45
Premise Security Armed ^b	45
Private Detective	25
Upgrade/Armed ^b	20
Combination Detective/Unarmed	50
Temporary	1
Certification	
Training Officer	\$60

^aLicense fees are the same for new and renewal, registration fees are the same for new, renewal and transfer.

^bThere is no additional cost for a security concealed weapon permit.

Source: State Law Enforcement Division FY 88-89 Annual Report.

Private Detective and Private Security Agencies Program Comments

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

CARROLL A. CAMPBELL, JR.
Governor



ROBERT M. STEWART
Chief

4400 Broad River Road (J.P. Strom Boulevard) • Mail: P.O. Box 21398
Columbia, South Carolina 29221-1398 • Phone: 803/737-9000

April 27, 1990

Mr. George L. Schroeder, Director
Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

Re: Sunset Review - S. C. Private Detective
and Private Security Agencies Program

Dear Mr. Schroeder:

Attached is SLED's response to the Sunset Review of the South Carolina Private Detective and Private Security Agencies Program. The attached draft has been reviewed by Captain Thomas W. Henderson, Jr., Lt. Patricia N. Murphy and myself and the response was typed by Mrs. Betty Koonce of this Division.

Ms. Marcia Ashford was very competent and cooperative in conducting this review, and we appreciate the professional manner in which it was carried out.

We submit the attached response for your consideration and if we can be of assistance to you in any way, please feel free to call on us.

Yours very truly,

Robert M. Stewart
Chief
S. C. Law Enforcement Division

RMS:PNM/bnk

Enclosures

Response To 1990 LAC Recommendations for
Private Detective/Private Security Program

1. No recommendation; therefore, no response required.
2. Recommendations: The General Assembly may wish to consider terminating the portion of the Private Detective and Private Security Agencies Program which pertains to the regulation of private detectives. The regulation of private security and premise security should continue. If regulation of private detectives is continued, the General Assembly may wish to consider amending state laws to set minimum competencies for licensure. In addition, recommendations addressing the private detective portion of the program should be implemented.

Response: SLED has no objection to the recommendation to deregulate the Private Detective industry. However, it should be noted that deregulation would open up the investigative field to anyone, regardless of background or criminal history, who wanted to establish a private detective business.

If deregulation is not approved, SLED strongly feels the need for amendments to require all licensed detectives to give written contracts and reports of investigation and services rendered to all clients to assist SLED's Regulatory Department in the handling of complaints. The majority of complaints received by SLED regarding private detectives involves ethics and conduct which are not addressed in the South Carolina Private Detective/Private Security Agencies Act.

3. No recommendation; therefore, no response required.
4. Recommendations: SLED should consider creating a policy stating that all licensed private security, premise security and private detective companies be inspected annually. A follow-up procedure to ensure that violations found during the inspection are corrected should also be considered.

SLED should consider employing investigative clerks for the Private Detective and Private Security Agencies Program.

Response: The Regulatory Department already has a policy that requires that all private security, premise security and private detective companies be inspected annually. We will, however, make this a written policy in SLED's Policy and Procedures Manual. Regulatory Agents are also instructed to conduct a follow-up inspection within six (6) months on any company that had violations in its last inspection. This, however, cannot always be accomplished due to an agent's workload. If improvements cannot be seen in a company's next inspection, however, that company is considered for an administrative hearing.

As for the recommendation that SLED employ investigative clerks, we agree that these positions are needed by the Regulatory Department. The Department has requested additional positions for the past three (3) years but none have been approved. SLED does not agree, however, that investigative clerks could totally replace the use of SLED Agents within the department though their addition would certainly be of benefit. We do not feel that you can have rules and regulations without enforcement and for enforcement purposes, commissioned officers are required. Many of the complaints received by the Regulatory Department could not be handled by individuals untrained in the criminal laws of South Carolina and in many instances on-sight inspections are required of security posts, some of which have resulted in arrests being made by our agents. Between February, 1987 and January, 1990, SLED Regulatory Agents made twenty-one (21) arrests for violations of the South Carolina Private Detective and Private Security Agencies Act.

5. Recommendations: An advisory council for the Private Detective and Private Security Agencies Program should be created with representation from the industry, law enforcement and the public.

The Private Detective and Private Security Agencies Program should be listed separately under the regulatory division's address and telephone listing in the public telephone directory.

Response: SLED concurs with the recommendation for an advisory council though we do feel it should be advisory only. We will also see that the Private Detective/Private Security Agencies Program is listed in the next publication of the public directory.

6. No recommendation, therefore, no response required.

7. No recommendation, therefore, no response required.

8. Recommendation: Applicable training for private detectives should be offered and enforced. If SLED determines that training for private detectives is not necessary, it should recommend to the General Assembly that state law be amended to delete training requirements.

Response: Training for private detectives is currently under consideration by the Governor's Subcommittee on Private Security. This training could possibly be handled through the State Technical Education System. As previously stated, however, SLED has not interpreted Section 40-17-80 as applying to private detectives as they are given no arrest nor firearms authority in the South Carolina Private Detective and Private Security Agencies Act.

Board of Registration for Foresters

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Introduction

Summary

After reviewing the laws and operations of the Board of Registration for Foresters, we conclude that the board does not meet the criteria for continuation. To justify continuation, we must find evidence that a significant risk to the health, safety or welfare of the citizens of South Carolina would result in the absence of the board. In our 1984 review of the board, we recommended that the board be terminated. Again, we could find little risk to the public which deregulation of foresters would pose.

We found that the board has not implemented recommendations from our 1984 audit. For example, the board has not:

- Developed a policies and procedures manual;
- Notified the public of board meetings;
- Investigated complaints in a timely manner; or
- Published a roster of foresters in a timely manner.

If the General Assembly determines that regulation of foresters should be continued, a title protection program for foresters would provide for a minimal level of regulation. Under a title protection program, only those who meet educational and testing requirements could use the title of forester. However, anyone could perform the functions of a forester. This issue is discussed in more detail on page D-6.

Recommendations

In accordance with Act 608 of 1978, the General Assembly may wish to consider terminating the Board of Registration for Foresters. As an alternative, the General Assembly may wish to reestablish the program under a title act, thereby removing restrictions on the practice of forestry.

If the board is continued, the recommendations that follow should be implemented.

Background

The registration of foresters in South Carolina began in 1962. Act 367 of the 1961 Acts and Joint Resolutions of South Carolina created the Board of Registration for Foresters to administer the law and organize the licensing process. According to state law, a forester is a person who has registered and qualified to engage in professional forestry practice. The law restricts the use of the title of forester and limits the practice of forestry to those individuals licensed by the board, with limited exceptions. Included in the Act's exemptions from registration are private landowners engaging in forestry practices on their own land, individuals permanently employed by them, and foresters who work for industry. Professional employees of public agricultural agencies may provide forestry information, education and conservation planning without registration, as long as such employees do not represent themselves as professional foresters. Unlicensed individuals may practice under the supervision of a registered forester.

The Board of Registration for Foresters is composed of five professional foresters and two nonforesters appointed by the governor for five-year terms. The board members who are foresters represent the South Carolina Commission of Forestry, the United States Forest Service, industry foresters and consulting foresters. Meetings of the board are held semi-annually, in April and September.

The board issued new or renewed licenses for approximately 844 foresters at the beginning of FY 89-90, 74% of whom work in South Carolina. The board indicates that the largest number, 387, work for industry, 282 work as consultants, 162 work for the state and federal governments, and 13 are retired.

Qualifications for registration include graduation from a board-approved, four year forestry curriculum and two years forestry experience, or six years of experience and the passage of a written examination reflecting knowledge equivalent to a four-year degree. Beginning in June of 1991, all applicants will be required to take the examination.

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Board of Registration for Foresters has no direct control over prices charged to consumers. The board does impose regulation costs on foresters through licensing and application fees (see Appendix D-I). However, it is not likely that these costs significantly affect the price of forestry services.

According to board records, the wood products industry is the third largest manufacturing industry in South Carolina. Revenues total 4.3 billion dollars annually. The board has no control over these revenues.

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

We have been unable to establish that a serious risk to the health, safety, or welfare of the citizens of South Carolina would result in the absence of the Board of Registration for Foresters. Arguments have been made that deregulation of the practice of forestry may impair the economic well-being of some private landowners. That is, unscrupulous foresters could take advantage of landowners. However, we have identified no evidence to support these arguments. Evidence indicates that when landowners complain of possible unscrupulous acts by foresters, the board does not always fully investigate the complaints or is slow to investigate (see p. D-13). Therefore we conclude that the Board of Registration for Foresters does not meet the criteria for continuation.

If the General Assembly wishes to maintain some regulation of Foresters, it may wish to re-establish the program under a title act. That is, those persons meeting educational and testing requirements can use the title of forester. Others could perform forestry services as long as they do not call themselves a licensed forester. The following outlines why the board could be discontinued.

**Protection for
Landowners**

According to board and Forestry Commission officials, and a state regulation, one of the goals of the board is to protect private, nonindustrial landowners from incompetent and/or unscrupulous individuals practicing forestry. Through the registration process, practice of the profession is restricted to those meeting qualifications. Commission and Clemson officials suggest that through the licensing process unqualified individuals who may otherwise seriously damage the economic interest of the small, private landowner are prevented from practicing. However, according to board records only 282 (34%) of 844 licensed foresters are consulting foresters (provide consulting services to landowners). The remaining licensed foresters work for government or industry.

The following statements have been made to us by Forestry Commission officials and other interested parties regarding the approximately 110,000 private, nonindustrial landowners:

Registration gives credibility to professional forestry. It assures that the public is not taken by an unscrupulous individual . . . The board is needed to evaluate complaints.

Registration adds to the profession of forestry. If there were no registration there would be a lot of untrained people . . . passing themselves off as foresters. These people would rip the public off

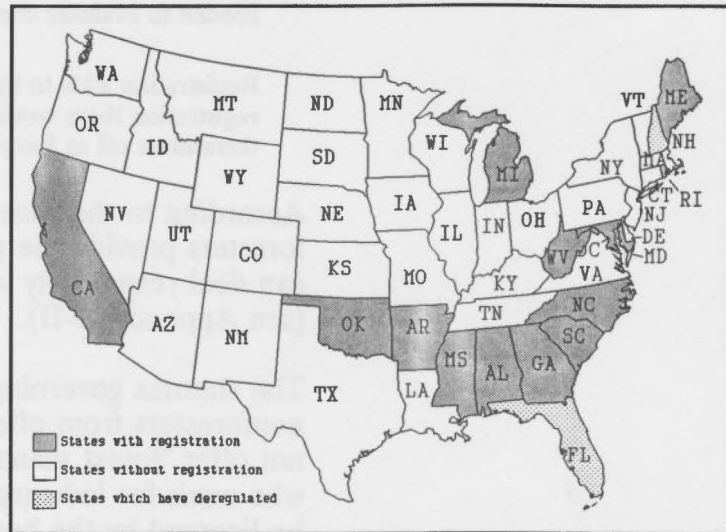
According to the state forester, "registration and licensing of foresters provide the public with a source of practitioners who can deal responsibly with all aspects of forest management." (see Appendix D-II).

The statutes governing registration of foresters do not prevent nonforesters from offering to buy timberland, although they may not offer "forest management" advice. Additionally, foresters who work for industry or only one landowner are not required to be licensed by the board. Therefore, even with state regulation, nonforesters may provide forestry services to landowners in certain circumstances.

Other States

The majority of states do not regulate the practice of forestry. According to Society of American Foresters records, 12 states in the country licensed foresters as of November 1988. Five southeastern states (Alabama, Georgia, Mississippi, North Carolina, and South Carolina) regulate forestry. The following map outlines the states which license foresters.

Figure 2D.1: Map of States Which Regulate Forestry



Source: Society of American Foresters, 1988.

Six of the twelve states which regulate forestry do not regulate the practice but restrict the use of certain titles. Under "title protection," the state issues credentials to individuals who meet certain standards. However, anyone could practice forestry. Title protection provides consumers with information that a forester has met certain standards.

Florida's registration program was terminated in 1979. According to an official in the Florida Department of Agriculture's Management Division, the program was terminated because it could not be shown that it met a public need. This official stated that there had been a move to reinstate the board. When this move presented itself, every forester on the consulting list and state landowners was contacted to tell of any adverse effects caused by the board's elimination. The agency did not receive one letter in which a landowner complained about a forester. The majority of the letters came from foresters complaining about one another because of stiff competition. New Hampshire deregulated the licensure of foresters in 1982.

We surveyed four southeastern states which have not licensed foresters and one state which has deregulated the practice of forestry. In all of these states, lists of consulting foresters are maintained by the state forestry agency. Lists are then provided to the public upon request. In two states, Florida and Kentucky, consulting foresters must have a four-year degree in forestry to be included on the list.

Advancement of Good Management Practices

As we reported in our 1984 audit, a goal of the board is protection of the public through promotion of good forestry practices. According to a 1989 Forestry Commission fact sheet:

Forest products are South Carolina's largest cash crop, with receipts totaling \$500 million . . . Forests or forestry related industries provide more than 31,000 jobs statewide . . . The demand for hardwoods, especially pulp quality, is expected to increase sharply over the next 20 years

The impact of termination of the board on the promotion of good forestry practices is difficult to estimate. It is in the best interest of the landowners to know how to maximize the sale or use of their forestry products. We found that the board has not conducted specific promotional activities, but still has plans for a poster, as they did in 1984. The board does provide landowners with a list of registered foresters upon request; however, this list includes only the names and addresses of the foresters and not the types of services they provide.

In the absence of the board, state and federal programs which promote good forestry management practices would continue to be available.

Professional forestry assistance is provided by the Forestry Commission. Professional foresters employed by the commission provide free of charge up to five days of assistance a year to any landowner in the state. This includes forest management advice and written forest management plans. In 1989, the Forestry Commission prepared 3,701 management plans for 207,186 acres. When practical, the commission refers the landowner to consulting or industrial foresters to carry out management recommendations. In 1989, 571 cases were referred to

consulting foresters with 344 cases referred to industrial foresters. Timber marking services (timber designated for cutting) are also available on a more limited basis, for a fee, by the commission. In 1989, the Forestry Commission marked 71 tracts with nearly 3 million board feet of sawtimber and 5,169 cords of pulpwood designated for cutting.

The Commissions's Forest Renewal Program provides financial cost sharing assistance to private woodland owners for reforestation. Other services offered by the commission for a fee include firebreak plowing, prescribed burning, prescribed burning standby, and equipment rental.

Conclusion

In 1984, we recommended that the Board of Registration for Foresters be discontinued. During the current review, we could find no evidence to indicate the need for the practice of forestry to be licensed. Most states (76%) do not regulate the practice of forestry, and the five states we contacted indicated they have experienced no problems without regulation. Without the board, the Forestry Commission would still provide landowners with forestry services and could recommend competent foresters to provide assistance to landowners.

Recommendation

In accordance with Act 608 of 1978, the General Assembly may wish to consider terminating the Board of Registration for Foresters. As an alternative, the General Assembly may wish to reestablish the program under a title act, thereby removing restrictions on the practice of forestry.

Determine the overall costs, including manpower, of the agency under review.

The Board of Registration for Foresters collects revenues through application, registration, and renewal fees. From FY 85-86 through FY 88-89, the board's expenditures increased from \$4,607 to \$22,339 while revenues increased from \$8,197 to \$26,863. Expenditures significantly increased in FY 86-87 and again in FY 88-89. The FY 86-87 increase occurred because the administrative assistant was promoted and her part time work hours were increased from 20 to 50 percent. The FY 88-89 increase occurred because the executive secretary was hired as part-time director of the board. Since FY 87-88, the board has met an Appropriation Act requirement that revenues equal 115% of appropriations.

The board has two employees. The board is headed by a part-time executive secretary who administers the functions of the board. A part-time administrative assistant helps handle correspondence, license and renewal applications, budgetary matters, and provides assistance to the board's executive secretary. The following table outlines the boards revenues, expenditures and appropriations.

Table 3D.1: Source of Revenues, Expenditures, and Appropriations

	FY 85-86	FY 86-87	FY 87-88	FY 88-89	FY 89-90 (estimated)
Revenues					
Professional and Occupational License Fees	\$8,197	\$17,780	\$17,550	\$26,863	\$26,847
Total	\$8,197	\$17,780	\$17,550	\$26,863	\$26,847
Expenditures					
Personal Service	\$859	\$7,062	\$8,452	\$9302	\$10,512
Special Contract Employee	0	0	0	8,000	0
Operating Expenses	3,547	3,064	3,049	3,081	11,263
Employer Contributions	174	957	1,425	1,956	1,702
Total	\$4,607	\$11,083	\$12,926	\$22,339	\$23,477
State Appropriation	\$6,238	\$13,950	\$14,080	\$22,929	\$23,477

Source: South Carolina Budget and Control Board Documents.

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

In our 1984 audit, we noted two problems which could affect the board's efficiency. The board did not have a requirement for continuing education and the board had not formalized a policies and procedures manual. The board is now required by §48-27-190 of the South Carolina Code of Laws to develop regulations for continuing education. The board has promulgated continuing education regulations; however, the board has not developed a policies and procedures manual.

Policies and Procedures Needed

The Board of Registration for Foresters has not adopted a policies and procedures manual. Section 1-23-140 of the South Carolina Code of Laws requires that state agencies adopt and make available to the public a written policy statement of all formal and informal procedures.

Written procedures provide a system of operating controls. The absence of guidelines for complaint handling, processing of applications, and investigations may result in inconsistent actions.

Recommendation

The Board of Registration for Foresters should develop a policies and procedures manual.

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

In 1984, we recommended that the Board of Registration for Foresters provide for public representation by adding two public members to the board. Presently, board membership requires five registered foresters and two members from the public not associated with the forestry business.

Public Participation

In 1984, we recommended that the board advertise its meetings and list its telephone number in the public directory. However, the board has not done this. In addition, since May 1985, only one member of the general public has attended a board meeting. The board does post notice of its meetings at the Forestry Commission; however, the board does not announce its meetings through the news media. The board's address is listed in the state government telephone directory, but no listing appears in the public telephone directory.

Recommendation

The Board of Registration for Foresters should notify the public of board meetings. Additionally, the board should list its address and telephone number in the public telephone directory.

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The Board of Registration for Foresters does not directly duplicate the services or programs administered by any state, federal, or other agency. One of the board's goals is protection of private landowners through promotion of good forestry practices. The South Carolina Forestry Commission also promotes this goal through a variety of programs which assist the private landowner in the state.

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

We reviewed the complaint files maintained by the Board of Registration for Foresters, and found that board response time was lengthy, file documentation was incomplete and cases have been closed without a decision being reached by the board.

The files we reviewed contained complaints and related documentation dated between January 1985 and December 1989. Of the 12 cases which the board has handled during this time, 5 have been resolved, 4 are unresolved, and the board closed 3 without a resolution.

Inadequate Response Time

The Board of Registration for Foresters has not resolved complaints in a timely manner. Four of 12 (33%) complaints filed between May 1985 and February 1989 had not been resolved as of January 1990. Two complaints were filed in 1986, one in December 1987 and one in February 1989. The following are two examples of unresolved complaints as of January 10, 1990.

In a complaint filed in 1986, a forester is accused of doing fraudulent and incompetent work. There is no evidence that the case was investigated until December 1989, when the board unsuccessfully attempted to contact the complainant. Commission records indicate that the case remains unresolved.

A complaint filed in 1986 alleged that a forester inflated the cost of reforestation of a landowner's property. There is no evidence that the case has been resolved.

Section 48-27-200 of the South Carolina Code of Laws require that:

All charges, unless dismissed by the Board as unfounded or trivial, must be heard by the Board as soon as a thorough investigation may be made and a hearing scheduled.

In our 1984 audit of the Board of Registration for Foresters, we found that the board was not investigating complaints in a timely manner. This problem has not been corrected. The board's secretary stated that cases remain unresolved because of his former full-time job with the Forestry Commission, and current lack of time.

Documentation
Incomplete

We found documentation was sometimes incomplete. In the files of a December 2, 1987 complaint, we found complaints against one forester. When we contacted the board secretary to ascertain the status of the case, the secretary stated that the board had contacted the Attorney General's office, in response to a prior complaint to prevent the person from practicing forestry. This action was documented. However, there was no documentation of any current action which the board stated it is pursuing in this case.

No Action by the Board

The board closed three cases without taking any action. One case alleged that a forester took payment from timber sales and refused to pay the owner for the timber. The board did not decide on the forester's guilt or innocence because he did not renew his license.

In another case, the complainant and the forester settled their dispute; however, the board took no further action to determine if violations of board laws occurred.

In order for the board to protect the public against fraud, deceit, and unscrupulous practice, it is necessary for the board to determine if complaints are valid and take any action necessary to deter future violations.

Recommendations

The Board of Registration for Foresters should ensure that complaints are investigated and resolved in a timely manner.

The board should ensure that complaint files are complete and updated.

The board should issue a final disposition on all cases investigated.

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Board of Registration for Foresters was created under and is subject to South Carolina laws and regulations. We could find no applicable federal or local statutes relating to the board. In our 1984, review we found that the board did not always publish annual rosters as required. Since that time, the board has not published a roster in three of five fiscal years.

Section 48-27-220 of the South Carolina Code of Laws requires that:

A roster showing the names and places of business of all registered foresters qualified according to the provisions of this chapter, shall be prepared by the secretary of the Board during the month of July of each year. Copies of this roster shall be mailed to each person so registered, placed on file with the Secretary of State, and furnished to the public on request.

The board published rosters for 1987 and 1988; however, rosters for 1985, 1986, and 1989 were not published. The board secretary stated that the board was having secretarial problems in 1985 and 1986. The board secretary stated that the reason the 1989 roster has not been published is because the board is waiting for needed computer equipment.

Recommendation

The Board of Registration for Foresters should adhere to §48-27-220 which requires that a roster be published each July.

Schedule of Fees FY 89-90

	Fee
Application Fee	\$30
Renewal Fee	20
Late Fee	5

Source: Regulation 53-16, South Carolina Code of Laws.

Board of Registration for Foresters Letter from the State Forester



South Carolina Forestry Commission

ROBERT J. GOULD, STATE FORESTER

P.O. BOX 21707 COLUMBIA, S.C. 29221 (803) 737-8800

March 21, 1990

Mr. George L. Schroeder, Director
Legislative Audit Council
620 NCNB Tower
Columbia, SC 29201

Dear Mr. Schroeder:

The South Carolina Forestry Commission is interested in and supportive of the South Carolina Board of Registration for Foresters. Since a review of that agency is underway, I would like to offer a few comments for the record.

The registering and licensing of foresters provides the public with a source of practitioners who can deal responsibly with all aspects of forest management. Forest products are South Carolina's largest cash crop, accounting for about \$500 million annually delivered value. Certainly an industry with this potential impact needs practitioners who can be held accountable for their actions as they are under South Carolina's Registration and Licensing law. There is no other agency or entity which could perform this vital function if the Board of Registration for Foresters ceased to exist.

In recent years, the Board of Registration has been undergoing change in response to the recent changes in the law. Two non-foresters have been appointed to the expanded Board, thereby broadening representation by the state's citizens. Regulations to require continuing forestry education for registered foresters are being finalized and a written examination will be required for all new foresters registrations. These steps will provide further credibility to the existing program.

The Board is certainly headed in the right direction, although there is still much to accomplish. Some time will be needed to fully evaluate the effects of the changes to see if they do strengthen the effectiveness of the Board as planned. Continuing the existence of the Board is needed to fully evaluate its potential. I support the continuation of the State Board of Registration for Foresters as being in the best interest of the citizens of South Carolina.

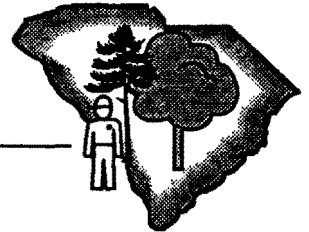
Sincerely,

A handwritten signature in dark ink, appearing to read "Robert J. Gould".
Robert J. Gould
State Forester

RJG/lb

Board of Registration for Foresters Comments

FORESTERS REGISTRATION BOARD



June 21, 1990

Mr. George L. Schroeder, Director
Legislative Audit Council
400 Gervais St.
Columbia, S.C. 29201

Dear Mr. Schroeder:

Thank you for the review by the Legislative Audit Council of the Board of Registration for Foresters. It will serve to help the Board to become a more efficient and effective organization.

We acknowledge that we are deficit in certain areas of the Board's operation; however with the paid staff now in place, we have begun to correct the weaknesses pointed out by the council.

Attached is the Board's response to the issues in the same order presented in the Council's report.

We strongly believe that the Board's existence has been a deterrent to unethical behavior both by non-foresters posing as foresters, and by foresters. This deterrent will be perpetuated by continuing the Board's existence.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bryant E. Watts". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Bryant E. Watts, Chairman

5500 BROAD RIVER ROAD • P.O. BOX 21707 • COLUMBIA, S.C. 29221
803 737-8800

Response to the Issues

Summary: " After reviewing the laws and operation of the Board of Registration for Foresters, we conclude that the board does not meet the criteria for continuation."

Response: We believe that we can justify the continuation of the Board and plan to be prepared to do so at the appropriate time. It is felt that there would be significant risk to the monetary welfare of citizens of South Carolina in the absence of the Board. We also believe that the resource, itself, could be unreasonably harmed, along with the environment.

Introduction: Page D-2, 2nd Paragraph The board members who are foresters represent the South Carolina Commission of Forestry, the United States Forest Service, industry foresters, consulting foresters and "The Clemson University Department of Forestry."

Issue (2) Page D-4,5,6,7 & 8: Due to manpower limitation, especially until November 1988, it has been extremely difficult to investigate complaints on a timely basis. Since that time, progress has been made by virtue of now having permanent staff.

Registration and licensing offers recognition to those who are qualified. It indicates creditability and encourages ethical practices.

The indication is that only 282, (34%) of the registered foresters, provide forestry services for private landowners. "The remaining licensed foresters work for government or industry," the report says. This is erroneous. Many industry foresters also do work for private landowners. The Forestry Commission foresters and Clemson University foresters offer forestry information and services to landowners and/or recommend that the landowner secure consulting foresters or industry foresters to carry out management recommendations, (as stated on the bottom of Page D-7-8).

The only foresters, working for industry, who are not required to be licensed are those who work full time on industry lands. Many industries encourage all foresters they employ to be registered. The number of non-foresters who may legally provide forestry services to private landowners is extremely limited.

The 110,000 private, nonindustrial landowners own more than 70% (8,750,000 acres) of the timberland in South Carolina, (reference bottom of Page D-4).

The most important way that the Board can promote good forestry practices is to determine that those who advertise to do forestry work, or hold themselves out to be foresters, are qualified. States without a registration law may include only those who have four-year degrees in forestry on their lists of consulting foresters, but they have no other influence over them, or others, who offer to do forestry work on their own.

It is not known, now, what question was asked about the list of registered consulting foresters which is furnished to landowners. Prior to 3/23/90 the list showing the types of services offered was badly out of date and was not being sent, for a short period of time, until a revised list was completed. This list showing services offered is now being provided. It is also available through extension offices in every county of the state.

The Board does not offer professional forestry assistance. It determines the qualifications of foresters and register those who qualify to offer professional forestry services. The Board also has the authority to investigate complaints and take the actions provided for in the law.

It is true that 76% of the states do not regulate the practice of forestry. It must be understood that many of those states have very limited forest land and most of that is in public domain. Seven of the twelve states that register foresters are located in the southeast - the "Wood Basket of the Nation". Five of them regulate forestry, (as stated on Page D-5).

Issue (3) Page D-9: Concur - The increase in dues and budget was, and is, for the purpose of fulfilling the recommendation of the 1984 audit report.

Issue (4) Page D-10: Concur - Procedures exist for many of the Board's functions. These are currently being documented for the Board's operation and for information to the public, by a Policy and Procedures Committee.

Issue (5) Page D-11: Concur - A letter has been written to the Telecommunications Section of the State Budget and Control Board, requesting that the Board's telephone number be listed in the public directory.

The Board has notified the public of meetings by posting schedules on the bulletin boards in the office of the Forestry Commission where the Board is housed; by notifying those who inquire about registration and by answering any questions about Board meetings. When the special meeting on June 5, 1990 was held a prior announcement was also sent to the local daily paper; local radio and television stations.

Issue (6) Page D-12: The Board is to determine that those who practice forestry are qualified in education, experience and ethics; to receive and investigate complaints and to take

appropriate action. No other program of any state, federal, or other agency can duplicate these functions under present law.

Issue (7) Page D-13-14: The fact that only 12 cases have been handled during the period of January 1985 through December 1989 leads us to believe that the law, and the existence of the Board, act as a deterrent to unethical practices. In an industry which produces 4.3 billion dollars annually, there are many opportunities for such practices.

The 1986 charges of doing fraudulent and incompetent work was discussed at the April 10, 1990 meeting of the Board. A decision was made, but no vote was taken. This will be reconsidered and a vote recorded.

The 3 cases referred to as "closed without a resolution" were discussed at the April 4, 1989 meeting. The Board agreed that the action which had been taken was correct, but no vote was recorded. These cases will be reopened and officially completed.

When contacted about the 1987 complaint, the board secretary stated that, because of the person's (he is not a forester) previous record, the secretary had contacted the Attorney General's Office for the purpose of getting a court order to forbid him from practicing forestry. A court order, the secretary was told, could not be obtained because there was not a valid address for that person. He keeps changing it.

While no progress has been made to date, the board is continuing to pursue the above case through the checking of drivers licenses, property titles and other avenues to secure a valid address.

There was never a formal complaint against the forester who took payment from timber sales and refused to pay the owner. Proof was secured that he pled guilty and was sentenced in court. This was after he had failed to renew his license.

In the case where the complainant and the forester settled their dispute, the complainant had been satisfied. Other allegations may come later, of course. It was felt that pending investigations should take precedence over "possible" violations that may be suspected.

A representative of the Attorney General's Office has the responsibility of advising the Board. That council is sought in operations and investigations.

Issue (8) Page D-16: In conjunction with the requirements for the registration and licensing boards and commissions to produce revenues equalling 115% of their appropriated funds, the Budget and Control Board agreed to furnish computer equipment and training for certain of the smaller ones. The request from the

Forestry Board was approved in May 1989. Purchase and delivery was indicated early in the new fiscal year. In anticipation of this, and in order to produce the roster as it should be, the Board waited - until it was too late to receive the needed training and produce the roster. The equipment has just been installed and a roster will be printed for 1990, and in future years.

Additional Comments

It is understood that the revenue requirement for the registration and licensing boards and commissions has been reduced, for 1990-91 fiscal year, to 110% of their respective budgets. Whether they produce 115% or 110% of their budgets, the boards are supported by registration fees, renewal fees, and other revenue generation, which make them self-supporting.

Many foresters who live in states that do not require registration of foresters, apply for, and become registered, in South Carolina. Others, who become registered while residing in South Carolina, move to states that do not require registration, but continue their registration here. Registration provides landowners assurance of the foresters professional competence; evidence that their education, experience and ethics have been examined and approved.

We sincerely believe that we have the strong support of the large majority of the 800+ registered foresters in South Carolina; the private forest landowners of the state and forest industry. We also believe that the Board has been strengthened by the changes in the law recommended by previous audits, increased funding and permanent personnel. We therefore recommend the continuation of the Board of Registration for Foresters in accordance with the present law.

South Carolina Coordinating Council for Economic Development

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Introduction

Summary

After reviewing the laws and operations of the South Carolina Coordinating Council for Economic Development, we conclude that there is a net public benefit from its functions and programs. In this report, we note several areas in which the operation of the Coordinating Council could be improved. We do not recommend that the Coordinating Council be terminated.

Our review was intended to be a constructive one, and our purpose was to point out areas for improvement. The absence of extensive comments of a positive nature does not, therefore, imply that the agency is not performing effectively. Operations of the Coordinating Council have included South Carolina's first statewide economic development plan, a grant program for new and expanding businesses, and an infrastructure mapping system.

Background

According to the State Development Board, in 1983 the Governor initiated the Coordinating Council on Economic Development to implement the recommendations of a task force on economic development. In June 1985, through an executive order, the Governor formally established the Coordinating Council for Economic Development, comprised of representatives from eight state agencies. In 1986, the General Assembly created the Coordinating Council for Economic Development in state law, comprised of representatives from ten state agencies. State law describes the Coordinating Council's responsibility as:

- . . . enhancing the economic growth and development of the State through strategic planning and coordination of the activities of various state and local agencies which shall include:
 - (a) the development of an annual state plan for economic development;
 - (b) an annual review of economic development activities for the previous year;
 - (c) the coordination of economic development activities on the state and local level, based on a partnership between public agencies and private organizations and businesses;
 - (d) the use of federal funds, foundation grants, and private funds to enhance economic growth and development in the State;

(e) the evaluation of plans and programs in terms of their compatibility with state objectives and priorities.

The membership of the Coordinating Council is currently required by state law to be comprised of the following eleven individuals:

- The State Commissioner of Agriculture;
- The chairman of the South Carolina Employment Security Commission;
- The chairman of the State Development Board;
- The chairman of the South Carolina Parks, Recreation, and Tourism Commission;
- The chairman of the State Board for Technical and Comprehensive Education;
- The chairman of the South Carolina Ports Authority;
- The chairman of the South Carolina Public Service Authority;
- The chairman of the South Carolina Research Authority;
- The chairman of the South Carolina Tax Commission;
- The chairman of the South Carolina Jobs Economic Development Authority; and
- The chairman of the Small and Minority Business Expansion Council.

An executive assistant and an administrative assistant staff the Coordinating Council.

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Coordinating Council for Economic Development has no regulations, programs, or functions which are likely to affect the cost of any goods or services. The Coordinating Council does not regulate any goods or services.

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

Without coordination of the economic development activities of state agencies, there would be an increased probability of inefficiency. In addition, without a state program for subsidizing the construction of access roads for new and expanding businesses, there could be reduced incentive to conduct business in South Carolina.

The Coordinating Council is the only agency we review under state sunset law which does not regulate or license a profession or industry.

Recommendation

The General Assembly may wish to consider removing the Coordinating Council from the sunset cycle.

Determine the overall costs, including manpower, of the agency under review.

The Coordinating Council's operating funds have increased from \$129,023 in FY 86-87 to an estimated \$1,183,659 in FY 89-90. Expenditures have increased from \$112,231 in FY 86-87 to an estimated \$1,183,659 in FY 89-90.

The Coordinating Council receives operating funds for its operating costs from the state agencies whose board chairmen serve on the Coordinating Council (see Table 3E.1). Although not a member of the Coordinating Council, the Governor's Office contributed funds in FY 86-87. Total funds contributed by member agencies and the Governor's Office were \$107,000 in FY 86-87, \$115,000 in FY 87-88, \$115,000 in FY 88-89, and an estimated \$60,000 in FY 89-90.

In addition, since FY 86-87 the Coordinating Council has received funding for three special projects. In FY 87-88, the General Assembly authorized the Coordinating Council to spend up to \$250,000 from the "Economic Development Account," which is funded by the state gasoline tax, to develop a "strategic economic development plan" for the state. This project was conducted under a contract with a private consultant. In FY 88-89, the General Assembly authorized the Coordinating Council to spend up to \$500,000 from the Economic Development Account to develop a computerized mapping system of the state's infrastructure network (including transportation, water, wastewater, etc) and factors such as industrial sites and community demographics. The General Assembly authorized up to \$60,000 annually, for the mapping system, for the years following FY 88-89. The Coordinating Council transferred funds for the mapping system to the State Development Board, which is coordinating the project. In FY 89-90, the General Assembly authorized the Coordinating Council to spend up to \$1 million from the Economic Development Account "to study the computer infrastructure needs of state government." As of March 1990, the Coordinating Council had contracted with the South Carolina Research Authority and the State Budget and Control Board to conduct the study.

The expenditures in Table 3E.1, as reported by the State Budget and Control Board, do not include road construction grants

awarded by the Coordinating Council or the cost of the Coordinating Council's two employees (see below).

Grant Program

In addition to its special projects, the Coordinating Council operates a grant program with funds from the Economic Development Account. From its inception in 1987 through January 1990, the Coordinating Council approved or committed approximately \$22 million for the construction of access roads for new and expanding businesses. These grants are not reported in the Coordinating Council's financial statements. They are reported in the financial statements of the Department of Highways and Public Transportation (Highway Department). A detailed analysis of this program is on page E-8.

In-Kind Contributions

The Coordinating Council receives in-kind contributions from the Governor's Office and the State Development Board, including: two employees, office space, office furnishings, photocopies, and postage. In FY 88-89, the Coordinating Council reports that it received approximately \$50,000 in in-kind contributions. However, they do not appear in the Coordinating Council's financial statements. As a result, the cost of operating the Coordinating Council is underreported to the public.

Recommendation

The Coordinating Council for Economic Development should report in its financial statements all significant in-kind contributions.

Issue 3
Administrative Costs

Table 3E.1: Source of Revenues and Expenditures

	FY 86-87	FY 87-88	FY 88-89	FY 89-90 (estimated)
Revenues				
Department of Agriculture	\$5,000	\$20,000	\$10,000	\$5,000
Development Board	25,000	25,000	25,000	15,000
Employment Security Commission	5,000	10,000	10,000	5,000
Governor's Office	40,000	0	0	0
Jobs Economic Development Authority	10,000	10,000	10,000	5,000
Department of Parks, Recreation, and Tourism	5,000	10,000	10,000	5,000
Ports Authority	5,000	10,000	10,000	5,000
Public Service Authority	5,000	0	10,000	5,000
Research Authority	2,000	10,000	10,000	5,000
Tax Commission	0	10,000	10,000	5,000
Technical and Comprehensive Education	5,000	10,000	10,000	5,000
Gasoline Tax Revenues	0	250,000	500,000	1,060,000
Funds From Prior Year	22,023	16,792	162,404	63,659
Total	\$129,023	\$381,792	\$777,404	\$1,183,659
Expenditures				
Personal Services	\$0	\$0	\$105	\$500
Contractual Services	110,186	42,707	82,541	117,459
Supplies and Materials	1,995	49	1,092	500
Fixed Charges and Contributions	50	25,154	320	200
Contributions	0	0	25,000	0
Travel	0	1,470	1,714	4,000
Equipment	0	563	4,353	1,000
Development of Strategic Plan ^a	0	149,445	98,620	0
Infrastructure Model ^a	0	0	500,000	60,000
Computer Study ^a	0	0	0	1,000,000
Total	\$112,231	\$219,388	\$713,745	\$1,183,659

^aFor a description of these projects see page E-5.

Source: South Carolina Budget and Control Board documents.

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

Economic Development Account

In 1987, the General Assembly created the Economic Development Account with revenues from a new state gasoline tax. With funds from this account, the Coordinating Council operates a grant program to support the construction of access roads for new and expanding businesses. The General Assembly has also authorized the Coordinating Council to spend a portion of Economic Development Account funds for three projects which are separate from the grant program.

Our review covers the Economic Development Account from its inception in 1987 through January 1990. During that period there were 66 requests for grant funds.¹ Excluding projects for which funding authorization was withdrawn, the Coordinating Council approved or committed a total of \$22,037,864 for 49 road projects. An official with the Coordinating Council reported that no grant request had been disapproved due to a shortage of funds.

Three Economic Development Account projects, which are separate from the road construction grant program, received a total of \$1,810,000 in FY 87-88, FY 88-89, and FY 89-90 (see p. E-5).

According to state law, funds may be expended from the Economic Development Account only upon authorization of the Coordinating Council. The Highway Department provides accounting services for the account.

Below we discuss areas in which the administration of the Economic Development Account could be improved.

¹Of the 66 requests for grant funds, 49 received "approvals" (5 of which were later withdrawn), 10 received "commitments" (3 of which were later withdrawn and 2 of which became approvals), 9 received "disapprovals" (1 of which became an approval), and 1 was pending.

Funding Methodology

State law is not clear regarding the required method for funding the Economic Development Account. We found that two different methods have been used to fund the account. In this section, we describe these two methods. In addition, we present a third method for funding the account, which has not been implemented.

The three methods are based on differing interpretations of §12-27-1270 of the South Carolina Code of Laws, which states:

The first ten million dollars of revenues from [a 1987 increase in the state gasoline tax] must be segregated in a separate account for economic development All funds devoted to the Economic Development Account are to remain in the fund if not expended in the previous fiscal year. Annually, funds from the [gasoline] tax . . . must be deposited to replenish the Economic Development Account. The total in the account at no time may exceed fifteen million dollars.

Method One

In FY 87-88, the Highway Department deposited \$10 million into the Economic Development Account. Expenditures for FY 87-88 were \$284,158. At the beginning of FY 88-89, the Highway Department replenished the account based on prior year expenditures, and deposited an additional \$5 million into the account. Thus, the Highway Department initially deposited a total of \$5,284,158 into the account in FY 88-89.

Method Two

The Coordinating Council later requested that another funding method be used to fund the Economic Development Account. According to a Highway Department official, the Coordinating Council requested that \$10 million be deposited into the account each year, up to the \$15 million limit. The Coordinating Council also requested that the \$15 million limit be defined as the account balance minus funds which have been approved or committed for road construction projects, but not yet expended. Following the Coordinating Council's request, the Highway Department increased the FY 88-89 deposit to a total of \$10

million. Account expenditures were \$2,599,006 in FY 88-89. The Highway Department deposited \$10 million into the account in FY 89-90.

Method Three

There is a third interpretation of §12-27-1270, for funding the Economic Development Account, which has not been implemented. Under this interpretation, the law requires an initial deposit of \$10 million into the account and requires that the account never exceed \$15 million. There would be no funding mechanism in §12-27-1270 which enables the Economic Development Account to exceed \$10 million, because the law only authorizes subsequent deposits to *replenish* the account. In addition, there would be no authority for annual deposits of \$10 million without regard to prior year expenditures. Finally, there would be no authority for subtracting unexpended funds from the account balance when determining compliance with the \$15 million limit.

Under this interpretation, the account has exceeded the \$15 million limit. As of January 31, 1990 the account had a balance of \$24,013,068.

Recommendation

The General Assembly may wish to review the method currently used (method two) to fund the Economic Development Account. If the General Assembly determines that this method is in the state's best interest, it may wish to consider amending state law to clarify the General Assembly's intent.

Grant Award Criteria

State law is not specific regarding how the Coordinating Council is to spend funds from the Economic Development Account, stating only that the account was established "for economic development." Thus, the Coordinating Council developed a program to award grants for constructing access roads for new

and expanding businesses. Its written funding criteria, however, are not clearly defined.

As previously stated, a Coordinating Council official reported that no grant requests have been disapproved due to a shortage of funds. However, as the number of grant requests increases, clearly defined criteria will become increasingly important for determining funding priorities.

The written criteria for awarding grants are outlined in a Coordinating Council document entitled "Guidelines for Approval of Application" (see p. E-12). They include: number of jobs created/jobs saved, type of business, whether the project is in a rural or urban area, unemployment, total dollars invested, future tax revenues, time frame for completion, funding sought from other sources, and expansion of existing business. The criteria also require that "road construction must be directly related to a specific industry." Finally, the criteria state that funding shall not be used for state government projects, maintenance of industrial/research parks, shopping centers, parking lots, or "simply opening up access to undeveloped property."

Some of the above criteria are not clearly defined:

- "Type of business" is not defined. There is also no indication of which types of businesses should receive funding priority.
- "Rural or urban development" is not defined nor is there an indication of which location should receive funding priority.

**Exhibit 4E.1: Economic
Development Account Guidelines**

**SOUTH CAROLINA COORDINATING COUNCIL FOR ECONOMIC DEVELOPMENT
HIGHWAY SET-ASIDE FUND
GUIDELINES FOR APPROVAL OF APPLICATION**

CRITERIA AND QUALIFICATIONS:

1. Number of jobs created/jobs saved;
2. Type of business;
3. County involved (Rural or Urban Development);
4. Unemployment;
5. Total invested dollars;
6. Future tax revenues;
7. Time frame for completion;
8. Funding sought from other sources;
9. Expansion of existing business.

Funds may be used for but not limited to the planning, development and implementation of construction for new roads that will result in the acquisition of a new/or expanded industry in South Carolina - road construction must be directly related to a specific industry.

County road improvement funds ("C" Funds) set aside for industrial and economic development should be fully utilized before applying.

Application must be submitted to and referred by a member agency of the coordinating Council.

Funding shall not be used for the following:

1. For the purpose of simply opening up access to undeveloped property;
2. Any state government funded projects;
3. For the maintenance of industrial/research parks;
4. Shopping centers/strip malls;
5. Paving of parking lots.

Funds for any other use must be approved by proviso of the South Carolina General Assembly as signed by the Governor.

Qualification and guideline list compiled by Council June 1987, and revised April 1989.

Source: Coordinating Council for Economic Development.

- "Unemployment" is not defined. In addition, the criteria do not specify how this factor is considered when awarding grants.
- "Total invested dollars" is not defined. For example, it is not clear whether this criterion would include equipment, materials, and labor purchased out-of-state for the construction of a South Carolina manufacturing facility.
- "Future tax revenues" is not defined. It is not clear whether this criterion applies to state or local taxes, or both. There is no indication of how far into the future tax revenues are to be considered.
- "Time frame for completion" is not defined. It is not clear whether this criterion refers to construction of the access road or construction of the business facility.
- "Expansion of existing business" is not defined. It is also not clear whether this criterion is intended to give priority to existing businesses which expand.

With clearly defined written criteria, the public would be better able to compare the criteria with the Coordinating Council's funding decisions, in order to assess whether grants are awarded consistently.

Procedures for Reviewing Grant Requests

The Coordinating Council has developed procedures for reviewing requests for Economic Development Account grants. According to July 13, 1989 minutes of a Coordinating Council meeting, the procedures are generally as follows. Persons requesting grants submit written applications to be reviewed against the funding criteria. After it conducts a preliminary review of the project, the Coordinating Council sends the application to the Highway Department for a cost estimate and an estimate of the time it would take to construct the road. The Coordinating Council then decides whether to fund the project and the level of funding.

The Coordinating Council has procedures which are not in writing. Below are two examples:

- The Coordinating Council reports that when a company needs quick authorization of funds to aid in its decision to locate at a proposed site, a written application is not required. In addition, the Coordinating Council does not require a cost study by the Highway Department. The Coordinating Council calls these funding authorizations "commitments." There are, however, no written policies or procedures which define the commitment process or state when it is to be used. Among the 66 funding requests we reviewed, there were 10 commitments totaling \$5,565,000 (3 of which were later withdrawn and 2 of which became approvals).
- In addition to funding commitments, there were eight funding approvals for which we found no evidence that Highway Department cost studies had been conducted. These approvals totaled \$1,467,000. The Coordinating Council has no written policy stating the conditions under which Highway Department cost studies are not necessary.

If these procedures were established in writing, the Coordinating Council's decision-making process could be more clearly communicated to grant applicants, and there would be greater assurance to the public that funds are allocated in a consistent manner.

Grant Awards

During our review of 66 requests for Economic Development Account grants, we found no evidence that 2 of the grant awards were consistent with the Coordinating Council's criterion that "road construction must be directly related to a specific industry":

- In FY 88-89, the Coordinating Council approved \$160,000 in funding for a road to a newly constructed manufacturing building which did not have a tenant. The application did not refer to a specific business or industry whose decision to locate in the building depended on funding of the road.

Coordinating Council officials indicated that the industry required confidentiality and, therefore, the industry's name was not documented. Coordinating Council officials indicated that the building now has a tenant.

- In FY 89-90, the Coordinating Council approved \$140,000 in funding for a frontage road along an interstate highway. The application referred to two businesses which had "expanded or moved [to the area] recently" but referred to no specific business or industry whose decision to locate in the area depended on funding of the road.

Recommendations

The Coordinating Council should ensure that all of its significant policies and procedures are in writing.

The Coordinating Council should amend its written criteria for awarding Economic Development Account grants so that the criteria are specifically defined.

Recognizing its periodic requirements for confidentiality and flexibility, the Coordinating Council should develop a policy stating the conditions under which exceptions can be made to its written criteria.

The Coordinating Council should ensure that its decisions to award Economic Development Account grants are consistent with its written criteria.

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

The Coordinating Council is required by §41-45-20 of the South Carolina Code of Laws to "meet at least quarterly." In 1987, the Coordinating Council held two meetings in the first quarter, none in the second, two in the third, and one in the fourth. In 1988, it held one meeting in the first quarter, none in the second, one in the third, and one in the fourth. In 1989, it held no meetings in the first two quarters, two in the third, and none in the fourth.

Coordinating Council meetings are announced through press releases made by the State Development Board.

The phone number of the Coordinating Council is listed separately in the state government phone directory and as part of the State Development Board in the City of Columbia phone directory.

Recommendation

The Coordinating Council for Economic Development should have meetings at least quarterly as required by §41-45-20 of the South Carolina Code of Laws or should request that the General Assembly amend §41-45-20 to require fewer meetings per year.

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

In a 1985 Legislative Audit Council review of the state's economic development activities, we noted that the Coordinating Council's role was to ensure planning and coordination of state agencies' economic development activities. We recommended that the Coordinating Council be permanently established within Title 13, Chapter 3, of the South Carolina Code of Laws, which authorizes and defines the functions of the State Development Board. In 1986 the General Assembly created the Coordinating Council as a separate entity. Authorization for the Coordinating Council is in Title 41, Chapter 45, of the South Carolina Code of Laws.

We found no federal or local entity which duplicates the functions of the Coordinating Council in planning and coordinating the economic development activities of South Carolina state agencies. As described below, however, the functions of the Coordinating Council overlap with those of the State Development Board.

Overlapping Functions

The functions of the Coordinating Council overlap with the functions of the State Development Board. Section 13-3-20 of the South Carolina Code of Laws states that one objective of the State Development Board is:

To promote the coordination of the functions and activities of the various agencies of the State and to act as the official State liaison office between the State and Federal and local planning, research and development agencies.

Section 13-3-20 states that another objective of the State Development Board is:

To promote public interest in the development of the State through cooperation with public agencies, private enterprises and charitable and social institutions.

The duties of the Coordinating Council, according to §41-45-20 of the South Carolina Code of Laws, include:

... strategic planning and coordination of the activities of various state and local agencies ... [and]

... the coordination of economic development activities on the state and local level, based on a partnership between public agencies and private organizations and businesses

Having separate state agencies with overlapping functions may not meet the requirements of §1-19-20 of the South Carolina Code of Laws, which states:

Any overlapping of executive and administrative agencies of the State government or the functions thereof, duplication of effort and activities of such agencies ... the separate existence and status of multiple or numerous agencies and functions having the same or related major purposes ... are declared to be against the public policy of the State and are hereby prohibited.

Recommendation

The General Assembly may wish to consider amending state law to ensure that the functions of the Coordinating Council and the State Development Board do not overlap.

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

The Coordinating Council for Economic Development reports that it has received no complaints regarding its operation from any persons or industries.

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Coordinating Council for Economic Development was created under and is subject to South Carolina law. We found that two different methods have been used to fund the Coordinating Council's Economic Development Account (see p. E-9). We found that the functions of the Coordinating Council overlap with the functions of the State Development Board (see p. E-17). We found that the Coordinating Council does not hold quarterly meetings, as required by state law (see p. E-16). Finally, we reviewed the Coordinating Council's foundation.

Public-Private Partnership Foundation

We found that the Coordinating Council has used its resources to subsidize the formation and operation of an organization entitled the Public-Private Partnership Foundation. The foundation considers itself to be a private organization. An official with the Coordinating Council informed us that the foundation received \$182,500 in private donations on a onetime basis to assist in funding the creation of a statewide economic development plan. Using state resources for a private organization, however, may not be in compliance with Article X, Section 11 of the South Carolina Constitution.

Following discussions with the Coordinating Council regarding this issue, agency officials informed us that the foundation will be dissolved and that its assets will be transferred to the Coordinating Council.

Highway Department Comments



SOUTH CAROLINA
DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION
P.O. BOX 191
COLUMBIA, S.C. 29202

June 4, 1990

Mr. George L. Schroeder, Director
Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

Dear Mr. Schroeder:

Ref: LAC-SUN-90-E Coordinating Council for
Economic Development

Enclosed is a copy of a letter from South Carolina Department of Highways and Public Transportation Executive Director J. G. Rideoutte to Mr. Richard Greer, Chairman of the State Development Board.

Apparently the misunderstanding in the replenishing of the Supplemental Economic Development account derives from a difference in funding concepts. Based on the Department's obligation funding method, there has been no excessive replenishment of the Economic Development Account.

If I can be of any further service, please advise.

Yours very truly,

Roger W. Powell
Secretary-Treasurer

Enclosure

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

May 30, 1990

Mr. Richard Greer, Chairman
S. C. State Development Board
Post Office Box 927
Columbia, South Carolina 29202

Dear Mr. Greer:

The Department of Highways and Public Transportation funds construction projects on an obligation rather than cash basis. Due to the length of time involved in the completion of such projects, it would be impractical to finance on a cash basis.

It is the Department's recommendation that supplemental economic development projects be funded on an obligation basis.

Yours very truly,

J. G. Rideoutte
Executive Director

Coordinating Council for Economic Development Comments



SOUTH CAROLINA COORDINATING COUNCIL FOR ECONOMIC DEVELOPMENT

Richard E. Greer
Chairman

June 26, 1990

Mr. George L. Schroeder
Director
Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

Dear Mr. Schroeder:

On behalf of the South Carolina Coordinating Council For Economic Development, I am pleased to submit the Council's response to the audit review conducted by the Legislative Audit Council.

The Council concurs with your conclusion "that there is a net public benefit from its functions and programs," and that "without coordination of the economic development activities of state agencies, there would be an increased probability of inefficiency." We are also in total agreement with your statement referencing the Economic Development Fund "without a state program for subsidizing the construction of access roads for new and expanding businesses, there could be reduced incentives to conduct business in South Carolina."

The \$10 Million Dollar Economic Development Fund is an extremely valuable tool which is used to enhance the economic growth of South Carolina by providing road incentives to new and expanding industry in the state. Since the inception of the program in November of 1987, the Coordinating Council has allocated and managed the administration of the funding for 86 road projects in 32 counties across the state which has encouraged an announced capital investment well exceeding 2 billion dollars and has generated over 11,000 jobs for South Carolina.

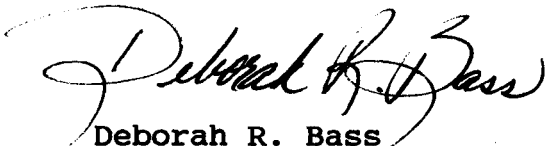
Post Office Box 927 Columbia, South Carolina 29202
(803)734-1400 (800)922-6684 (In State) TWX No. 810-666-2628
Fax (803)737-0418

Mr. George L. Schroeder
Legislative Audit Council
June 26, 1990
Page Two

We look forward to continuing our role in the economic well-being and prosperous growth of the State of South Carolina. Additional comments addressing specific issues are enclosed.

Thank you, again, for allowing us to input on your review of the South Carolina Coordinating Council For Economic Development.

Sincerely,



Deborah R. Bass
Executive Assistant

DRB:dlw

Enclosures

**SOUTH CAROLINA COORDINATING COUNCIL
FOR ECONOMIC DEVELOPMENT**

June 26, 1990

**Itemized Response to Review of
The Legislative Audit Council**

ISSUE 3. Determine the overall costs, including manpower, of the agency under review.

**LAC
RECOMMENDATION**

The Coordinating Council for Economic Development (CCED) should report in its financial statements all significant in-kind contributions.

**CCED
RESPONSE**

A recently completed audit of the CCED by the State Auditor's Office for the last completed fiscal year (1988-89) included several recommendations for determination and fiscal reporting requirements by the CCED for all in-kind contributions. These, and all other recommendations of the auditor's office with respect to fiscal responsibility have been or are in the process of being implemented.

ISSUE 4. Evaluate the efficiency of the administration of the programs or functions of the agency under review.

SUB-ITEM A. Level Of Funding.

**LAC
RECOMMENDATION**

The General Assembly may wish to review the method currently used (method two) to fund the Economic Development Account. If the General Assembly determines that this method is in the state's best interest, it may wish to consider amending state law to clarify the General Assembly's intent.

**CCED
RESPONSE**

§12-27-1270 of the South Carolina Code of Laws does not set forth specific guidelines for the administration of the Economic Development Account (EDA) with respect to what constitutes expenditures subject to replenishment. From the inception of this program, the CCED, the SCDHPT, the Governor, and the leadership of the General Assembly agreed in principal that commitment of account funds to a project would constitute expenditure of funds with respect to the fund balance (method two). When the Coordinating Council incurs an obligation, it encumbers the fund account. In this way, the Council insures that monies are available when needed for disbursement; not only at the onset of various projects but throughout their duration. Yet, at no time in the Economic Development Account's history, has the uncommitted balance exceeded the \$15 million as authorized by state law.

The CCED will request the General Assembly to clarify this through the amendment of state law. The CCED also maintains that the current system (method two) is effective and has not resulted in the expenditure of state funds greater than those allowed by state law.

SUB-ITEM B.

Grant Award Criteria.

**LAC
RECOMMENDATION**

The Coordinating Council should ensure that all of its significant policies and procedures are in writing.

**CCED
RESPONSE**

The Economic Development Account is designed and intended to be a tool to enhance the efforts of the member agencies of the Coordinating Council in the area of economic development. Although there are instances of commitment of funding authorizations without the use of formal application by the member agency, these represented less than 3% of the total authorizations. And those grants which were awarded under this area were done so in a manner consistent with published guidelines. Please note that the area of economic development does not always lend itself to rigidly

structured rules, especially when the state is competing on a international basis. Moreover, these are not competitive cycle grants, but rather awards provided on the basis of developmental potential. Accordingly, the criteria employed are intentionally broad in scope and meant to ascertain a project's potential rather than to compare projects with one another.

The basic decision-making process with respect to the awarding of grant funds from the EDA is clearly understood by all member agencies of the CCED and remains consistent throughout its application to all requests for funding.

**LAC
RECOMMENDATION**

The Coordinating Council should amend its written criteria for awarding Economic Development Account grants so that the criteria are specifically defined.

**CCED
RESPONSE**

The CCED will address the issue of specific criteria definition as its effects the awarding of grant monies from the Economic Development Account.

**LAC
RECOMMENDATION**

Recognizing its periodic requirements for confidentiality and flexibility, the Coordinating Council should develop a policy stating the conditions under which exceptions can be made to its written criteria.

**CCED
RESPONSE**

The Coordinating Council will develop policy and procedures which will comply with this recommendation.

**LAC
RECOMMENDATION**

The Coordinating Council should ensure that its decisions to award Economic Development Account grants are consistent with its written criteria.

**CCED
RESPONSE**

The two projects cited by the LAC during this review were both awarded EDA funding in a manner consistent with published guidelines.

On the project which was awarded \$160,000 in EDA funds during FY 88-89, Sumter County

requested assistance in its efforts to secure a prospect for its newly constructed manufacturing facility. A tentative approval for funding was issued by the CCED contingent upon actual location by the prospect. Once this commitment was secured by Sumter County, formal approval for the funding was granted by the CCED.

The second project cited by the LAC was for the expenditure of \$140,000 for the funding of a frontage road along an interstate highway. Minutes of the CCED meeting during which approval of this funding was granted were provided to the LAC. Award of these funds were again consistent with published guidelines.

Under no circumstances have funds been awarded from the EDA in any manner by the CCED which are not in accordance with both the letter and intent of published guidelines.

ISSUE 5.

Determine the extent to which the agency under review has encouraged the participation of the public, and, if applicable, the industry it regulates.

**LAC
RECOMMENDATION**

The Coordinating Council for Economic Development should have its meetings at least quarterly as required by §41-45-20 of the South Carolina Code of Laws or should request that the General Assembly amend §41-45-20 to require fewer meetings per year.

**CCED
RESPONSE**

The CCED will comply with state law on this matter.

ISSUE 6.

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

**LAC
RECOMMENDATION**

The General Assembly may wish to consider amending state law to ensure that the functions of the Coordinating Council and the State Development Board do not overlap.

**CCED
RESPONSE**

The CCED concurs with this recommendation.

Board of Examiners for the Licensure of Professional Counselors, Associate Counselors, and Marital and Family Therapists

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Introduction

Summary

After reviewing the operations and laws of the Board of Examiners for the Licensure of Professional Counselors, Associate Counselors, and Marital and Family Therapists, we conclude that title protection of counselors and therapists benefits the public and should be continued. However, we found several areas where improvements could be made.

Background

The Board of Examiners for the Licensure of Professional Counselors, Associate Counselors, and Marital and Family Therapists was created by Act 191 of 1985. The board licenses, as Licensed Professional Counselors, Licensed Associate Counselors, and Licensed Marital and Family Therapists, applicants who meet certain academic and experience requirements. Persons must be licensed in order to use these titles; however, state law does not require licensure in order to practice counseling or therapy. This form of regulation, which restricts the use of titles to those who have been credentialed by the state but does not prohibit practice by those without credentials, is sometimes referred to as "title protection." As of March 1990, 822 licensees held one or more types of license issued by the board.

The board is composed of eight members. Three are licensed professional counselors, three are licensed marital and family therapists, and two are members of the general public.

We reviewed the laws of seven southeastern states. Florida, Georgia, North Carolina, and Tennessee regulate the use of titles of counselors, and Alabama, Mississippi and Virginia regulate the practice of counseling. Of the seven states reviewed, Florida, Georgia, and Tennessee also regulate marital and family therapists.

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Board of Examiners for the Licensure of Professional Counselors, Associate Counselors, and Marital and Family Therapists has no direct control over the prices charged or wages received by counselors and therapists. The board does impose regulation costs through license fees. It is not likely, however, that these costs significantly affect the price of services.

Limits on Competition

The following sections of state law may result in higher prices for the services regulated by the board by placing unnecessary restrictions on entering the profession and advertising.

Out-of-State Applicants

Section 40-75-100 of the South Carolina Code of Laws requires that applicants for licensure as counselors or therapists "reside or intend to practice in the State." It is questionable how this restriction on entering the professions of licensed counselor and therapist protects the public.

There are other health-related professions, regulated by the state of South Carolina, which do not restrict entry in this manner. Applicants for licensure or registration as physicians, nurses, pharmacists and optometrists are not required to reside or practice in South Carolina. They are also not required to show any intent to reside or practice in South Carolina.

On a related issue, in 1985, the United States Supreme Court ruled that a residency requirement for licensure as an attorney in the state of New Hampshire was unconstitutional.

Solicitation

Section 40-75-170(n) prohibits licensed counselors and therapists from "[using] a solicitor or other person to obtain patronage." This prohibition against all solicitation is an unnecessarily broad restriction on advertising. It could lead to reduced information available to consumers and reduced competition. Solicitation which is truthful and nondeceptive can provide beneficial information to consumers.

Recommendations

The General Assembly may wish to consider amending §40-75-100 of the South Carolina Code of Laws to delete the requirement that applicants for licensure as counselors and therapists be residents of or practice in the state.

The General Assembly may wish to consider amending Section 40-75-170(n) to permit solicitation which is truthful and nondeceptive.

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

Although any person may practice counseling or therapy, state law restricts the use of the titles, "licensed professional counselor," "licensed associate counselor," and "licensed marital and family therapist" to persons who are licensed as such.

We found that the economic and fiscal impact of deregulation would be limited, primarily because the number of persons permitted to practice counseling and therapy would not change. Since title protection does not impose barriers to practice, deregulation might not, in itself, result in additional competition and lower prices.

However, the absence of title regulation would impact on the public in other ways. Deregulation would eliminate minimum academic and experience requirements for licensure, and would eliminate continuing education requirements. The consumer would thereby have reduced assurance that, in selecting a practitioner to provide services, minimum standards had been met.

The board currently investigates complaints against licensees. The board is authorized to revoke a license or otherwise discipline a licensee when a licensee has committed misconduct. We found no other state agency authorized to act upon complaints against counselors or therapists. Without regulation, consumers would have less recourse for misconduct.

Based on the above reasons, we conclude that title protection should be continued.

Determine the overall costs, including manpower, of the agency under review.

The State Board of Examiners for Professional Counselors, Associate Counselors and Marital and Family Therapists receives an annual appropriation from the General Assembly. It collects revenues through licensure, application and other fees. According to state law, the board allows licensees to renew their licenses on a biennial basis. Thus, revenues fluctuate from year to year. The board has one permanent employee, an executive secretary. The board also employs a temporary, part time employee. The following table outlines board revenues, expenditures and appropriations.

Table 3F.1: Source of Revenues, Expenditures, and Appropriations

	FY 85-86 ^a	FY 86-87	FY 87-88	FY 88-89	FY 89-90 (estimated)
Revenues					
License Fees	\$•	\$77,800	\$11,872	\$93,665	\$36,230
Application Fees	•	34,955	12,129	19,710	6,800
Other Revenue	•	•	1,620	5,630	6,400
Total	\$•	\$112,755	\$25,621	\$119,005	\$49,430
Expenditures					
Personal Services	\$1,785	\$9,767	\$26,688	\$25,562	\$27,576
Other Expenses	6,115	48,945	34,921	41,024	32,031
Employee Benefits	•	328	2,540	3,831	6,176
Total	\$7,900	\$59,040	\$64,149	\$70,417	\$65,783
State Appropriation	\$8,000	\$48,140^b	\$62,157	\$81,784	\$65,783
Revenue/Appropriation	0	234%	41%	146%	75%

^aFirst year of operation.

^bIncludes appropriations from civil contingency funds.

Source: State Budget and Control Board budget documents.

Board Fees

The board has not generated enough revenues to be in compliance with an appropriation act requirement that revenues be equal to 115% of appropriations. Board revenues generated in FY 88-89 were not sufficient to cover revenue shortfalls from FY 87-88.

Section 129.39 of the FY 88-89 appropriation act requires occupational licensing boards to generate revenues equal to 115% of appropriations, and to raise fees to cover any shortfalls from the previous year. The board would have had to have generated an additional \$20,907 in FY 88-89 to have met the requirement that revenues be equal to 115% of appropriations for both FY 87-88 and FY 88-89. Revenues for FY 89-90 are estimated to be only 75% of appropriations.

Recommendation

The board should examine its fee structure and increase fees if necessary, in compliance with state law, to ensure that revenues are sufficient to cover 115% of appropriations.

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

Exemptions

State law does not require any persons who practice counseling or therapy to be licensed as long as they do not represent themselves as licensed counselors or therapists. However, §40-75-190 of the South Carolina Code of Laws also states that persons such as government employees, lawyers, and clergymen, are exempt from the licensure act as long as they do not represent themselves as licensed counselors or therapists. The exemption for these professions is redundant.

Additionally, §40-75-190(8) states:

... No regular employee of a licensed hospital in this State may be required under this chapter to be [a] licensed [counselor or marital and family therapist] as a condition of employment by such hospital or as a condition for the performance of services similar to those described in this chapter while employed in such hospital.

Such a restriction may limit a hospital's ability to use the titles regulated by the board as measures of quality in hiring criteria.

Recommendation

The General Assembly may wish to consider amending the South Carolina Code of Laws to delete §40-75-190.

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

The eight-member board includes two members from the general public who are not associated with or financially interested in the counseling practices regulated by the board. The board conducts public meetings approximately nine times a year. Notice of each meeting is posted in the building where the meeting is to be held and is sent to three major newspapers in the state. In addition, the board has telephone listings in both the state government and city of Columbia telephone directories.

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

We found no evidence that the Board of Examiners for Professional Counselors, Associate Counselors and Marital and Family Therapists duplicates the services, functions or programs of any other state, federal or local government agency. The board is the only entity which licenses these professions in South Carolina. However, other state government agencies regulate related professions, including psychologists and social workers. Although these professions may overlap with professional counselors, associate counselors and marital and family therapists in certain areas, educational requirements for the various professions are different.

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

Since its inception in 1985, the board has received eight complaints, all of which were reviewed. One complaint related to a conflict of interest, two involved allegations of improper sexual conduct with clients, and five alleged varying types of unprofessional conduct. One complaint resulted in a license revocation; one lead to a suspension; one was disposed of by a letter of reprimand; two were closed for lack of evidence of misconduct; two were closed because the complainants failed to provide all necessary information; and, as of March 1990, one investigation was ongoing.

Under board Regulation 36-2.1, complaints are required to be sworn (signed under oath before a notary public) and submitted in writing. Board members investigate complaints. In the eight files that we reviewed, we found no indication of deficiencies in the investigation and resolution of complaints against licensees. However, the board does not maintain a log of complaints listing the complaint number, the date received, the complainant, the nature of the complaint, and its resolution. Even though the board has not received a large number of complaints in the past, as the volume increases, a central log for recording and tracking complaints would assist in monitoring them.

Additionally, the requirement that complaints be sworn could discourage the submission of complaints to the board. This, in turn, could result in unreported misconduct.

Recommendations

The Board of Examiners for the Licensure of Professional Counselors, Associate Counselors, and Marital and Family Therapists should develop and implement a log for tracking complaints.

The General Assembly may wish to consider deleting from Regulation 36-2.1 the requirement that complaints be "sworn."

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Board of Examiners for the Licensure of Professional Counselors, Associate Counselors, and Marital and Family Therapists is governed by South Carolina law. We found several instances where the board did not comply with state statutes and regulations, as discussed below.

Procurement

The board has violated the South Carolina Consolidated Procurement Code and has permitted conflicts of interest to arise in procurement matters.

Regulations Consultant

In 1987, the board paid a board member's daughter, residing out-of-state, approximately \$1,700 to ". . . write and edit, in a timely manner, regulations . . ." including a code of ethics for the board. In this transaction, the board violated the Procurement Code and permitted a conflict of interest to occur.

State Regulation 19-445.2100 requires agencies to solicit written quotations from three sources for procurements from \$1,500 to \$2,499.99. In the alternative, an agency may procure a service without competition when a written determination justifies only one source (that is, a sole source) for the required service. As noted by the Division of General Services in a 1990 procurement audit, the board's records contain no evidence of competition and no justification for sole source procurement.

According to a 1983 Attorney General's opinion, government officers are prohibited from participating in decisions on matters in which they have a "personal or private interest distinct from the interest which they hold in common with members of the public." The board's files indicate that, in this instance, the board member participated in selecting the consultant and monitoring work performance. The board member thereby participated in decisions in which the board member had a personal interest.

Continuing Education
Consultant

For services from October 1987 through June 1989, the board paid a consultant \$7,125 to develop procedures for approving and monitoring continuing education. However, the board did not solicit competition or meet the requirements for a sole source procurement, as required by state law.

Minutes of an August 20, 1988 board meeting indicate that the board discussed state procurement laws. The minutes state:

It was discussed that the job of [continuing education] consultant should be put out for bids under the Sole Source Procurement provision of the State Procurement Code [T]he State requires that the Board offer the job for bids.

The board, however, continued to use the same consultant without soliciting competition, and, as of May 1990, remained in noncompliance with the Procurement Code.

In addition, one matter handled by the consultant constituted a conflict of interest. The consultant is a part-time employee of the State Department of Mental Health (DMH). In November 1987, the State Commissioner of Mental Health requested that DMH be recognized as a permanent provider of continuing education. The board's executive secretary forwarded this written request to the consultant. In a letter dated March 30, 1988, the consultant notified DMH that the request had been approved by the board. The consultant's participation in reviewing DMH's request constituted a conflict of interest. Furthermore, we found no record of the board's approving DMH as a continuing education sponsor.

Recommendations

The Board should comply with the South Carolina Consolidated Procurement Code.

Board members should not participate in any matters which constitute a conflict of interest or could give the appearance of a conflict of interest.

Nonreimbursable Expenses

The board has violated state regulations governing reimbursement of mileage, meals, and overnight accommodations to state employees.

At various times from October 1986 through July 1989, a board member's privately employed secretary, residing in North Myrtle Beach, performed secretarial services for the board. The secretary was paid by the board on an hourly basis, for a total of \$2,457. On nine occasions, the secretary traveled from North Myrtle Beach to Columbia and stayed in Columbia hotels from three to six nights, for a total of 35 nights. She was reimbursed \$710 for mileage, \$725 for meals, and \$1,713 for hotel rooms, from state funds. None of these expenses was legally reimbursable.

State Regulation 19-101 prohibits reimbursement for mileage between an employee's home and place of employment, meals within ten miles of an employee's official headquarters, and overnight accommodations within fifty miles of official headquarters. Additionally, provisos to the state appropriation acts for FY 86-87, FY 87-88, and FY 88-89, prohibited the allowance of expenses to employees at the official headquarters of the agency. Therefore, the board unlawfully expended approximately \$3,148 on mileage, meals, and hotels.

In addition, the board's files contain no time records in support of three payments, in May, June, and July 1989, totaling \$661.

Recommendation

The board should comply with state regulations governing reimbursement of expenses.

Unauthorized Classes of License

The board has acted beyond the scope of its authority by adding three classes of license not provided for in the licensure act. Section 40-75-30(8) of the South Carolina Code of Laws authorizes the board to license professional counselors, associate

counselors, and marital and family therapists. The statute does not authorize the board to license supervisors. However, by regulation, the board also issues licenses to marital and family therapist supervisors (R.36-1.4) and counselor supervisors (R.36-4.2), and registers counselor supervisors-in-training (R.36-4.2).

Recommendations

The board should issue only licenses which are authorized by state statute.

The General Assembly may wish to consider amending §40-75-30(8) of the South Carolina Code of Laws to authorize the board to license supervisors.

Schedule of Fees FY 89-90

Item	LPC ^a	LAC ^b	LAC to LPC	LMFT ^c	Dual LPC or LAC with LMFT	LPC Supervisor	LMFT Supervisor	Dual License Supervisor
License Application	\$75	\$75	\$25	\$75	\$150	\$25 (or \$75 if not LPC)	\$25 (or \$75 if not LMFT)	.
Supervisor-in-Training Registration Application	NA	NA	NA	NA	NA	25	25	\$40
License Fee	100	100	25	100	150	50/yr.	50/yr.	75/yr.
Period	2-year	2-year	2-year	2-year	2-year	5-year	5-year	5-year
Annual File Maintenance Fee	15	15	15	15	30	15	15	30
License Renewal	100	100	100	100	150	50/year	50/year	75/year
Reinstatement after Lapse (In addition to Renewal Fee)	50	50	NA	50	75	50	50	75
Examination	60	60	NA	60	NA	NA	NA	NA
Exam Score or License Verification	5	5	NA	5	NA	NA	NA	NA

^aLPC=Licensed Professional Counselor.

^bLAC=Licensed Associate Counselor.

^cLMFT=Licensed Marital and Family Therapist.

Source: Board of Examiners for the Licensure of Professional Counselors, Associate Counselors, and Marital and Family Therapists.

Board of Examiners for Counselors and Therapists Comments

State of South Carolina



**Board of Examiners
for
Licensed Professional Counselors, Associate Counselors, and
Marital and Family Therapists**

P.O. BOX 7965
COLUMBIA, SOUTH CAROLINA 29202
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June 15, 1990

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Dear Mr. Schroeder:

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Enclosed are the Board's comments on the recently completed Legislative Audit Council's Sunset Review report prepared by Jane Johnson. We understand that these comments will be published with your final report.

Secretary

Kathryn E. Altman, Ph.D.
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We appreciate your cooperation in making the minor changes we requested. I would like to say that Ms. Simpson, our Executive Secretary, has relayed to me that Ms. Johnson was a pleasure to work with. She notified us in advance of the paperwork she needed, she was solicitous of the time involved in supplying her with needed documentation, and she was unfailingly polite and professional.

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If I can be of service in any way, please feel free to contact me.

At Large Member

Robert Parham, Ph.D.
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Sincerely,

Kinly Sturkie
Kinly Sturkie, Ph.D.
President

Executive Secretary
Jan B. Simpson

Board of Examiners for Counselors and Therapists
Final Response to Sunset Review Report
June 15, 1990

The Board of Examiners for the Licensure of Professional Counselors, Associate Counselors, and Marital and Family Therapists offers the following as comments on the final report by the Legislative Audit Council.

The Board is pleased that the review by the Legislative Audit Council concludes that title protection of counselors and therapists benefits the public and should be continued. The Board believes strongly that protection of the public is the main thrust of its work and agrees that deregulation would not only eliminate minimum academic and experience standards from the field of counseling, but would also eliminate continuing education requirements of licensed practitioners. Additionally, without regulation, as stated on page F-4, consumers would have less recourse for misconduct.

On the recommendation that the General Assembly might wish to amend the law to eliminate the requirement that applicants for licensure reside or intend to practice in South Carolina:

As a regulatory agency, we believe we would be in an untenable position if we were required to monitor and regulate the practice of persons out of state. This would be a particularly problematic issue if we were to receive a complaint on someone out of state. We believe it would inhibit our ability to focus more fully on regulating practitioners in South Carolina.

On the recommendation that the Board examine its fee structure and increase fees if necessary, in compliance with state law, to ensure that revenues are sufficient to cover 115% of appropriations:

Because of the Board's sensitivity to increasing costs in all areas of life, we have been reluctant to raise fees for a license that is not required under state law. However, faced with the reality of the state's proviso that boards generate revenue equal to 115% of appropriations, we voted in January 1990 to raise licensure fees from \$100.00 over the two-year period to \$150.00 over the two-year period. We anticipate that the resulting increase in revenue will be sufficient to bring us into compliance with the budget proviso.

It should be noted, however, that state regulations require boards to defer revenue collected in one fiscal year to the next fiscal year when that revenue affects the later period. For instance, revenue from license renewals in January for the ensuing two-year period is actually credited to three fiscal years: 25% for the current year, 50% for the next fiscal year,

Board of Examiners for Counselors and Therapists
Final Response to Sunset Review Report
June 15, 1990

and 25% for the third fiscal year. This has a tremendous impact on revenue figures and creates an initial two- to three-year adjustment period for the cycle of revenue to "even out." This accounting requirement puts an additional burden on state agencies trying to produce revenue of 115%. Because the Board began deferring revenue in FY 90, we will not reach our projected revenue estimates for this fiscal year.

On the recommendation that the Board develop and implement a log for tracking complaints:

This has been accomplished. Complaints received and investigated to date have been set up on an in-house computer database requiring a security password for entry. Information includes the complaint number, date received, licensee's name, complainant, nature of the complaint, its resolution, and the Board member who investigated. In addition, an informal written record is maintained of persons who request complaint forms. Information includes the requestor's name and address, date requested, date mailed, and manner in which the request was received (typically by telephone).

On the recommendation that the General Assembly may wish to consider deleting from Regulation 36-2.1 the requirement that complaints be "sworn":

The Board agrees that requiring complaints to be sworn could discourage submission of complaints to the Board and concurs with the recommendation that the General Assembly consider deleting that requirement.

On the recommendation that the Board comply with the South Carolina Consolidated Procurement Code:

The Board recognizes that errors have been made in our procurement of auxiliary professional services. We wish to emphasize, however, that the decisions that resulted in this area were made very early in the Board's life as it was clarifying its major tasks and was creating a basic administrative infrastructure to address these tasks. Since our hiring of Ms. Jan Simpson, our Executive Secretary, in October 1986, we have continually become more cognizant of and fully responsive to state policies regarding these matters. We fully intend to comply with all aspects of the South Carolina Consolidated Procurement Code.

Board of Examiners for Counselors and Therapists
Final Response to Sunset Review Report
June 15, 1990

On the recommendation that Board members should not participate in any matters which constitute a conflict of interest or could give the appearance of a conflict of interest:

The Board concurs with this recommendation. We regret that attention to other Board-related matters resulted in a lack of attention to this very important area. In the future, Board members will not participate in any matters which constitute a conflict of interest or could give the appearance of a conflict of interest.

In summary, the Board believes that it has handled its major tasks in an appropriate, professional, and timely manner. Protection of the public remains our highest priority. We are appreciative of the affirmation given us by the Legislative Audit Council's conclusion that title protection of counselors and therapists should be continued. We are equally appreciative of and will be responsive to the recommendations for improving our performance as a Board.

South Carolina Auctioneers' Commission

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Introduction

Summary

After reviewing the laws and operations of the South Carolina Auctioneers' Commission, we have determined that there is a public need for the regulation of auctioneers, and that the commission should be continued. In ensuring that auctioneers are licensed and bonded, the commission has operated efficiently. However, this audit recommends several ways in which efficiency could be improved.

The Auctioneers' Commission licenses fewer than 1,000 auctioneers and auction firms, and it could be more efficient to transfer its administrative functions to the Real Estate Commission. Both commissions regulate persons who mediate the sale of property, either real or personal, belonging to other individuals. Dual licenses are held by 21% of auctioneers. With 28,000 licensees, the Real Estate Commission has the administrative, investigative and computer resources to direct these functions for the Auctioneers' Commission. The five-member Auctioneers' Commission could remain intact and serve to set policy and hold hearings (see p. G-12). In addition, a recovery fund instead of the bond requirement would be more efficient (see p. G-10). Improvements are needed also in the way that complaints and investigations are managed (see pp. G-11,16).

Background

The South Carolina Auctioneers' Commission was created in 1977 by Act 111 to regulate auctions and auctioneers. The commission licenses auctioneers, apprentice auctioneers and auction firms. The law defines auctions as the sale of goods or real estate by means of exchanges between the auctioneer and members of his audience. These "exchanges" consist of a series of invitations for offers made by the auctioneer, offers by members of the audience, and the acceptance by the auctioneer of the highest or most favorable bid.

The commission is composed of five members, at least three of whom must be licensed auctioneers, who serve for terms of three years. The governor appoints all members. He may consider nominations from the South Carolina Auctioneers

Association but this is not mandatory. Currently, four of the five commission members are licensed auctioneers.

The commission ensures that each licensee maintains a current bond and that licenses are renewed annually. It conducts examinations at least four times a year and approves the curriculum and staff of auctioneering schools. It receives and investigates complaints, holds hearings and inspects auctions. Current commission staff include an executive director, an executive secretary and an administrative specialist.

In South Carolina, tobacco and livestock are sold primarily through auctions. Tobacco and purebred livestock auctioneers hold special licenses and are exempt from exam and bond requirements.

Estates and antiques, business inventories, real estate, farm equipment and automobiles are often sold through auctions. As of June 30, 1989, 853 auctioneers and 114 auction firms held current licenses.

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Auctioneers' Commission does not regulate fees charged by auctioneers; therefore, it has no direct control over the price of auctioneers' services. Examination and license fees are costs of regulation, but these costs are not likely to affect the price of services, as auctioneers' commissions are usually based on a percentage of the auction proceeds.

Exemptions Allowed

Some auction sales are exempt from licensing regulation. An individual or his attorney may auction off his own goods or real estate as long as the goods were not *originally* acquired for purposes of resale. Auction sales conducted by a public authority; conducted following a judicial order or in the settlement of a decedent's estate; conducted by a trustee pursuant to a valid power of sale; or otherwise required by law are exempt from licensing requirements. Also exempt are any sales conducted by charitable or religious organizations, as long as the person conducting the sale does it without a fee.

Tobacco and purebred livestock auctioneers must obtain an auctioneer's license but do not have to maintain a bond or take an examination as long as they conduct only these types of auctions. Also, firms which sell livestock, tobacco, and automobiles (to dealers only) are not required to have a commission license as long as these sales are regulated by another state agency. These types of auctions usually are not open to the public.

Exemptions to this law allow an individual to auction his own property, if he so desires, without bearing any costs of regulation. Those auctions not attended by members of the public do not receive the same degree of commission regulation as do general or other types of auctions.

Apprenticeships

Individuals seeking licensure as auctioneers either have to obtain 80 hours credit from an approved auctioneering school or serve a two-year apprenticeship. All applicants must pass a written license exam. Section 40-6-70 of the South Carolina Code of

Laws requires apprentices also to pass a test before the start of their two-year apprenticeship. Apprentices must be under the direct supervision of a licensed auctioneer. They must maintain a monthly log of their auctioneering experience and receive at least 40 hours of training per year before they can take the license exam. Commission staff keep track each month of how many hours the apprentices accumulate in each type of auctioneering activity.

The two-year apprenticeship period appears to be longer than necessary. As long as an apprentice gains 80 hours of experience, he could be allowed to complete his training in one year. We could find no need for the two-year requirement, which may serve to restrict the number of apprentices. As of March 1990, there were only ten apprentices.

Recommendation

The General Assembly may wish to consider amending §40-6-70 of the South Carolina Code of Laws to allow apprentices to complete their training in one year.

Examination

All individuals seeking a South Carolina auctioneer's license must pass a written exam administered by the commission on a quarterly basis. The commission is in the process of developing a new exam from a bank of questions purchased from a professional testing service. Tobacco and livestock auctioneers as well as individuals licensed in reciprocal states are exempt from taking the exam.

Reciprocity Statutes

Section 40-6-130 of the South Carolina Code of Laws requires the commission to establish reciprocity with states that recognize South Carolina's licenses. The law does not specify that the license requirements in reciprocal states be equal to or greater than South Carolina's. The commission recognizes reciprocity with Virginia, for example, where auctioneers can be either registered or certified, neither of which requires training to the extent specified in South Carolina.

To date, the commission recognizes reciprocity with 14 states. Twenty-four other states have no statewide licensing law. Practicing auctioneers from these states may obtain a reciprocal license in South Carolina by going through a third state where reciprocity is recognized. But because of the way commission law is written, less qualified auctioneers licensed in other states, most notably Virginia, could obtain a reciprocal license in this state.

Recommendation

The Auctioneers' Commission should study the statutes and policies on reciprocity. The commission should consider requesting the General Assembly to amend §40-6-130 to allow reciprocity with states that have licensing laws substantially equivalent to South Carolina's.

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

The regulation of auctioneers helps protect both those individuals who sell their merchandise or real estate at auction and those who buy merchandise or real estate at auctions, and should be continued.

The seller needs an auctioneer who will try to obtain a good price, who will represent fairly his ability to sell the goods, and who will be scrupulous and prompt in turning over the proceeds of the sale. The buyer needs an auctioneer who will fairly represent the value and condition of the items sold and who will not try to artificially raise the bids by unethical practices.

People who wish to sell goods at auction, especially in the case of an estate sale or business liquidation, may have contact with an auctioneer only during that time. They have no previous experience by which to judge the competency of an auctioneer, yet may be entrusting their life's savings to him. Likewise, the real estate, cars or other items sold at an auction can represent a major purchase for consumers. An incompetent or unscrupulous auctioneer is in the position to do substantial harm to consumers.

According to federal and state agriculture officials, two major products of South Carolina - tobacco and livestock - are sold primarily through auction markets. Tobacco sold in South Carolina auction markets brought in approximately \$164 million for 1989. Sales of livestock at auction were estimated to be \$110 million last year. The Auctioneers' Commission and industry officials estimate that close to one billion dollars worth of goods and real estate are sold through auctions in South Carolina each year. According to the National Auctioneers Association, 26 states and Washington, D.C., license auctioneers. All southeastern states with the exception of Mississippi require auctioneers to be licensed; Mississippi requires only livestock auctioneers to be licensed.

State regulation requires auctioneers to be bonded and meet minimum educational requirements. Through licensure the commission has the ability to investigate wrongdoing and hold independent hearings. In the past five years it has filed five bond claims totalling \$19,536, reimbursing consumers for losses caused by incompetent or unethical auctioneers. This is crucial

to consumer protection. Deregulation would allow anyone holding himself out as an auctioneer to conduct auctions, and the public would have little recourse from an auctioneer absconding with the proceeds of a sale.

Determine the overall costs, including manpower, of the agency under review.

The Auctioneers' Commission receives an annual appropriation from the General Assembly. It also collects revenues through application, license renewal, examination and other fees. The commission has three full-time employees: an executive director, an executive secretary and an administrative specialist. The following table outlines commission revenues, expenditures and appropriations.

Table 3G.1: Source of Revenues, Expenditures, and Appropriations

	FY 85-86	FY 86-87	FY 87-88	FY 88-89	FY 89-90 ^a
Revenues					
License Fees	\$90,455	\$68,485	\$113,845	\$118,685	\$167,170
Apprentice Fees	950	475	900	800	1,350
Exam Fees	1,725	1,400	6,140	3,150	2,800
Other Revenue	35	35	356	139	89
Total	\$93,165	\$70,395^b	\$121,241	\$122,774	\$171,409
Expenditures					
					(estimated)
Personal Services	\$55,164	\$56,608	\$68,933	\$72,139	\$74,347
Employee Benefits	9,722	9,973	12,772	14,370	15,524
Other Operations	24,549	25,852	27,414	36,288	36,849
Other	•	•	•	1,277 ^c	•
Total	\$89,435	\$92,433	\$109,119	\$124,074	\$126,720
State Appropriation	\$105,608	\$106,903	\$109,290	\$125,277^d	\$126,442
Revenue/Appropriations	•	•	111%	98%	136%

^aActual revenues as of February 6, 1990.

^bTotal revenue remitted to the General fund for FY 86-87 was \$131,360. However, \$60,965 was deferred revenue, in accordance with Generally Accepted Accounting Principals.

^cNonrecurring appropriation.

^dIncludes carried-over funds.

Source: South Carolina Budget and Control Board Documents.

Commission Revenues

In FY 87-88 and FY 88-89, the commission did not generate enough revenue to be equal to 115% of appropriations, as required by the Appropriation Acts for those years. The shortfall for these two years totals \$25,737. However, actual revenues collected for FY 89-90 are already 136% of the appropriation for this year, with an excess of \$26,001. This should cover the previous years' shortfall.

Recommendation

The Auctioneers' Commission should continually review its fees to ensure that they are sufficient to generate 115% of appropriations.

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

Our review of the Auctioneers' Commission identified several areas where efficiency could be improved.

Recovery Fund

The commission's efficiency could be improved if the agency established a recovery fund and terminated its bond requirement.

Auctioneers must maintain a \$5,000 bond to keep their license in force. The commission is empowered to attach this bond when a consumer is judged to be financially wronged. However, ensuring that all bonds are current creates a lot of paperwork for commission staff, who estimate that about 150 (15%) of the bonds expire each year. In each case the staff must monitor the auctioneer to ensure that a new bond is obtained, or else send out notices that the auctioneer's license will be suspended. Also, the \$5,000 has not been enough to always cover consumer losses.

North Carolina has already established a recovery fund that eliminates the need to bond auctioneers. Each auctioneer, when applying for or renewing a license, pays \$50 into the fund until a minimum level of \$100,000 is established. The fund allows the North Carolina Auctioneers' Commission to pay an aggrieved party up to \$10,000, and it not only provides more coverage for consumer losses but also generates interest funds.

The South Carolina Auctioneers' Commission is in the process of drafting similar legislation, and plans to introduce it in the 1990 legislative session.

Recommendation

The General Assembly may wish to consider enacting legislation to establish a recovery fund in lieu of a bond for the Auctioneers' Commission.

Guidelines for Investigations

From July 1985 to January 1990, the former investigator for the commission made approximately 600 on-site investigations, primarily to determine whether an auction firm or auctioneer was licensed. In only 44 cases (7%), did he find an unlicensed individual or firm operating an auction illegally.

Investigations were conducted in response to allegations that a particular individual or auction was unlicensed, or when the investigator found a newspaper advertisement for an auction which did not list the auctioneer's name and license number as is required by law.

The commission does not have formal guidelines as to how and when to conduct on-site investigations. The former investigator stated that it was his duty to travel to any auction alleged to be unlicensed. The commission spent \$38,790 in travel reimbursements to the investigator between July 1985 and January 1990.

In addition, the former investigator used his personal vehicle to conduct inspections, driving not less than 22,448 miles per year for the past four years. According to guidelines from the Division of Motor Vehicle Management, it is more economical for state employees to use a state car when they drive more than 1,500 miles a month (18,000 per year).

In a March 1990 meeting, the commission determined that many complaints about unlicensed practitioners should and can be handled over the telephone. The commission also discussed setting guidelines for future investigations.

Recommendation

The Auctioneers' Commission should establish written guidelines to determine when on-site investigations of auctioneers are needed.

Administration by Real Estate Commission

An increase in overall efficiency might be achieved by maintaining auctioneer licensing laws but transferring administrative and investigation responsibility to the Real Estate Commission. The following points address why this could be desirable:

- The activities of auctioneers and real estate agents are similar in that they are responsible for the sale of property or goods for other people. Both commissions test and maintain minimum competency levels, enforce licensing laws, and discipline those found in violation of the law.
- Approximately 21% of auctioneers also are licensed by the Real Estate Commission to sell real estate.
- The Auctioneers' Commission does not have a full-time investigator. In order to hire one, a new position would have to be approved, or the commission would have to use an investigator on a contractual basis. The Real Estate Commission, on the other hand, has an investigative staff of eight, who conduct on-going, on-site investigations and inspections of licensees.
- According to Real Estate Commission officials, the commission could absorb the administrative functions of the Auctioneers' Commission with little or no disruption. The Real Estate Commission already licenses about 28,000 people. Adding the approximately 1,000 auctioneer licensees would increase the workload by less than 4%.
- If operating costs decline, the Auctioneers' Commission may be able to reduce fees for licensees. For example, auctioneers pay \$150 per year to renew their licenses. A real estate broker-in-charge pays \$50 for license renewal; a broker pays \$35 and a real estate salesman pays only \$25 to renew a license.
- The Real Estate Commission inspects licensees' records to ensure that escrow accounts are properly maintained. The Auctioneers' Commission has proposed legislation to require that auctioneers maintain escrow accounts for the deposit of

auction proceeds. The Real Estate Commission could inspect these accounts also.

- The Real Estate Commission has a recovery fund to address claims made against time-share real estate sales. The Auctioneers' Commission is proposing legislation to establish a recovery fund for auctioneers in lieu of the bond now required. This operation also could be addressed by the Real Estate Commission's existing system.

Transferring the functions of the Auctioneers' Commission to the Real Estate Commission could save at least \$5,000 annually in rent. Some portion of \$87,000 in personal services budget could be saved if the Real Estate Commission does not need to acquire all of the Auctioneers' Commission's staff. The Auctioneers' Commission itself could remain intact and still function independently to establish policies, recommend legislation and hold hearings.

Recommendation

The General Assembly may wish to consider merging the administrative functions of the Auctioneers' Commission with those of the Real Estate Commission.

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

The Auctioneers' Commission meets on the third Monday of each month except in July. News releases announcing the meetings are sent to the local media and a notice is posted in the commission's offices. As required by law, the commission publishes an annual directory listing the names, addresses and license numbers of all auctioneers and auction firms. The directory also gives information on commission meetings, lists the names and addresses of commission members, and encourages participation by both the public and licensees. The commission's telephone number is listed in the city of Columbia and the state government telephone directories.

**Consumer
Representation**

Members of the commission are appointed by the governor. All five members were licensed auctioneers until February 1990, when a consumer was appointed to take the place of a retiring commissioner. There is no provision in state law which requires the commission to have a public member; however, three commission members must be licensed auctioneers. Previously, at least three members were to be appointed from nominations submitted by the South Carolina Auctioneers Association; a 1987 amendment deleted this requirement.

Recommendation

The General Assembly may wish to amend §40-6-40 of the South Carolina Code of Laws to require that at least one member of the Auctioneers' Commission not be associated with the auction business.

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The Auctioneers' Commission does not duplicate the functions or services of any other state, federal or local agency. While the South Carolina Department of Agriculture regulates livestock and tobacco auctions to some extent, this does not overlap the regulatory duties of the Auctioneers' Commission.

The licensing program administered by the Real Estate Commission is similar in nature to that of the Auctioneers' Commission. Since 21% of auctioneers also hold a real estate license, it could be more efficient for the Real Estate Commission to administer the functions of the Auctioneers' Commission (see p. G-12).

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

Since July 1988, the commission has kept a log of written consumer complaints showing the date of origin and commission action. We identified 32 complaints from this log. An additional 31 written complaints dating back to April 1984 were identified, for a total of 63 complaints reviewed. In 22 complaints the commission held a hearing; in 19 cases, the complaint was dropped or satisfied without a hearing; in 18 cases the complainant never returned the complaint form; and four complaints were pending. The average time of resolution for a complaint was about seven and one-half months. We found the following problems with the commission's handling of complaints.

Notarizing Complaints

Commission policies and procedures require consumers to submit a notarized complaint form before it will act on complaints. After it receives the form, the commission sends it to the auctioneer in question, who must send his notarized reply to the complainant. The complainant then has 20 days to request a hearing upon receipt of the auctioneer's reply.

The commission will not act on any complaints until it has received the notarized form. However, in at least 18 (29%) of the complaints, the consumers did not return the complaint form. Even if the consumers had already written at least one letter to the commission, they still were required to submit the notarized form.

According to an official with the Department of Consumer Affairs, they also require that complaints be in writing. However, if a letter is sent, this is accepted in lieu of an official form, and consumers are not required to notarize their complaints.

The process mandated by the Auctioneers' Commission may discourage consumers from filing complaints and inhibit the timely resolution of complaints. Because of its policy, the commission did not resolve at least 29% of the complaints reviewed.

Recommendation

The Auctioneers' Commission should repeal its regulation that complaint forms be notarized. If it receives a complaint by letter, commission staff could transfer the necessary information onto the complaint form.

Tracking Repeated Complaints

The commission does not have a system to keep track of repeated consumer complaints against individual auctioneers. Our review of commission complaint files from April 1984 to January 1990 found at least 11 auctioneers who have received two or more consumer complaints against them. The commission has held hearings involving only three of these auctioneers, and our review could find only three other instances where these complaints initiated an on-site investigation.

According to Auctioneer Commission policy, if a consumer does not request a hearing, the complaint is closed even if the auctioneer has received repeated complaints against him. The commission also lacks a policy to determine when investigations of consumer complaints should be initiated. As a result, the commission has not taken action even when some auctioneers may be engaging in practices harmful to the consumer.

Recommendation

The Auctioneers' Commission should develop a method to keep track of repeated complaints made against individual auctioneers. The commission should consider enacting a policy to investigate an auctioneer who has received more than one complaint against him.

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The Auctioneers' Commission was created under and is subject to South Carolina laws and regulations. No federal or local statutes apply directly to the commission's activities. The commission has followed all appropriate laws in developing its policies and procedures, increasing fees and carrying out its legislative mandate. However, the commission approved an auction license for a firm which, according to state law, should not have been granted one.

License Granted Improperly

In January 1989, the Auctioneers' Commission granted a license to the owner of an automobile auction firm. Thirteen months previously, this individual had been convicted of mail fraud and his firm of conspiracy to commit odometer fraud. Section 40-6-60, of the South Carolina Code of Laws, states that:

No person shall be licensed if he has within the preceding five years pleaded guilty to or been convicted of any felony

According to commission officials, they based their decision to grant a license to the automobile auction firm because of verbal legal advice given to them by the Attorney General's Office. The individual had also been able to retain his dealership privileges from the South Carolina Department of Highways and Public Transportation.

However, we could find no provision in state law to allow licensure under this circumstance. In addition, Regulation 14-1 would have allowed the commission to deny a license because of a prior felony conviction. This action violates the intent of the law to protect consumers by ensuring that auctioneers have no prior felony convictions.

Recommendation

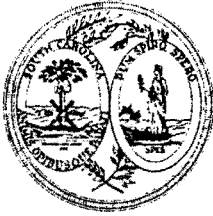
As required by law, the Auctioneers' Commission should deny licenses to individuals with felony convictions within five years of application for licensure.

Schedule of Fees FY 89-90

	Fee
Examination	\$50
Apprentice License	150
Auctioneer License	150
Auctioneer Firm	150
Yearly Renewal	150

Source: South Carolina Auctioneers' Commission.

Real Estate Commission Comments



South Carolina Real Estate Commission

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ROY PEAHEY
JAMES EARL SPAIN
GERALD S. TOMPKINS

June 5, 1990

HENRY L. JOLLY
Commissioner
EMILY (PAT) McALISTER
Deputy Commissioner

Mr. George L. Schroeder, Director
Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

Dear Mr. Schroeder:

This is to confirm that I have received a confidential draft of the findings by the Legislative Audit Council pertaining to the proposals that may affect this agency, if enacted in whole or in part by the General Assembly, conducted during your Sunset Review of the South Carolina Auctioneers' Commission.

We, of course, will abide by the wishes of the General Assembly. Should we be of assistance to you or your staff, you know you can call on me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Henry L. Jolly", is written over a printed name and title.
Henry L. Jolly
Commissioner

HLJ/ap

South Carolina Auctioneers' Commission Comments



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Mr. George Schroeder, Director
Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

Dear Mr. Schroeder:

Thank you for allowing us the opportunity to preview the Audit Council's sunset analysis of the South Carolina Auctioneers' Commission. Enclosed is the Commission's response to the report recommendations. After reviewing our responses, I feel you will agree there is little about the Auctioneers' Commission that should be in question. In fact, most of the recommendations have already had action taken upon them prior to this report, while the others are in the process of being addressed.

The main objection we have to the preliminary report is the conclusion the South Carolina Real Estate Commission should absorb the administrative functions of the Auctioneers' Commission. We see no savings to the State in this regard, and would not anticipate any savings to the auctioneers themselves. The real loss, however, would be to the general public.

The auctioneering profession is unique unto itself and requires specific training and disciplines that are not, as a rule, applicable to real estate licensees. Therefore, we feel it is essential the Auctioneers' Commission maintain its own identity to better protect the interests of both the auctioneers and the general public.

Once again, the Commission appreciates your consideration during our audit process, and hopes its response will be included in the final report.

Sincerely,

A handwritten signature in cursive script, reading "Harriett E. Bishop".

Harriett E. Bishop
Executive Director

Enclosure
cc: Commission members

**RESPONSE TO THE LEGISLATIVE AUDIT COUNCIL'S
SUNSET ANALYSIS OF THE
SOUTH CAROLINA AUCTIONEERS' COMMISSION
JUNE 21, 1990**

The Auctioneers' Commission appreciates acknowledgement in your report findings that the regulation of auctioneers protects both the buyer and seller of goods sold at auction, and should be continued. In addition, the Commission strongly agrees regulation is crucial to consumer protection, and deregulation would allow anyone holding himself out as an auctioneer to conduct auctions, leaving the public with little recourse if an auctioneer absconded the proceeds of a sale.

ISSUE (1), RECOMMENDATION 1, PAGE G-4:

The Commission agrees with the Audit Council's recommendation that the General Assembly may wish to consider amending Section 40-6-70 of the South Carolina Code of Laws to allow apprentices to complete their training within a one-year period.

ISSUE (1), RECOMMENDATION 2, PAGE G-5:

The Commission agrees it should study the statutes and policies on reciprocity, and has already requested from all reciprocal states their current licensing laws and guidelines, which will be addressed in next year's legislative package for consideration by the General Assembly.

Furthermore, as noted in the report, South Carolina does reciprocate with other states that have similar laws. Regarding reciprocity privileges, Virginia issued specific guidelines November 20, 1986. In accordance to those guidelines, South Carolina only reciprocates with certified Virginia auctioneers whose qualifications are most similar to South Carolina's requirements for licensure.

ISSUE (3), RECOMMENDATION 3, PAGE G-9:

The Commission agrees it should continually review its fees to ensure revenues are sufficient to generate a minimum 115% of appropriations. As noted in the report, the Commission did raise its revenues in 1989, and all revenue shortfalls have already been repaid. As of June 11, 1990, the Commission has collected \$181,104 in revenues for FY 1989-90, or 141% of appropriations. According to preliminary changes made by the Conference Committee to the 1990-91 appropriations bill, projected Commission revenues for FY 1990-91 will be a minimum of \$185,000, or 115% of appropriations. (This is subject to Budget and Control Board negative adjustments.)

Page 2
Auctioneers' Commission Response

ISSUE (4), RECOMMENDATION 4, PAGE G-10:

The Commission agrees with the recommendation to establish a recovery fund in lieu of requiring individual bonds for licensees. Legislation was proposed to create a recovery fund for the Auctioneers' Commission during the 1989-90 legislative session. However, Commission support for the bill was withdrawn when it was determined the proposed language was not sufficient to address all problem areas the Commission would face if the auctioneering bonds were no longer required.

Furthermore, it has been agreed that Representative Thomas A. Limehouse will assist the Commission in drafting proper legislation during the fall of 1990. This legislation will either be prefiled or introduced when the 1991 session begins.

ISSUE (4), RECOMMENDATION 5, PAGE G-11:

The Commission agrees written guidelines for conducting investigations are needed, and has instructed the agency's current director, Harriett E. Bishop, to make this issue a priority. Ms. Bishop is in the process of developing written investigative guidelines for the Board's consideration on or before September 1, 1990.

ISSUE (4), RECOMMENDATION 6, PAGE G-12:

The Commission strongly disagrees with the recommendation that the administrative functions of the Auctioneers' Commission be absorbed by the South Carolina Real Estate Commission.

Though it is true some functions of auctioneers and real estate agents are similar, it is more important to realize many of their functions and areas of expertise are distinctly different. For example, real estate licensees deal only with real estate and their training is specialized towards this one area. On the other hand, auctioneers are trained to conduct sales for a wide array of goods, including business and industrial liquidations, furniture, antiques, farm equipment, real estate, art, rugs, jewelry, tobacco, and cattle and livestock.

Again, it is correct that both commissions do test and maintain minimum competency levels, enforce licensing laws and discipline those found in violation of the law, just as do most other State regulatory agencies.

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Auctioneers' Commission Response

In addition, the report noted as another reason for this recommendation that 21% of auctioneers are also licensed by the Real Estate Commission to sell real estate. Does this vein of logic justify totally ignoring the remaining 79% of the auctioneering licensees and their interests?

In regard to this recommendation, the Commission members found it difficult to understand why the audit report recommended merging the Auctioneers' Commission specifically with the Real Estate Commission as opposed to another State agency. If this recommendation is worthy of merit, then so is the logic that since a large number of bankers hold licenses to sell credit life insurance, they should fall under the jurisdiction of the South Carolina Insurance Commission. In addition, many attorneys also hold real estate licenses. Shouldn't they too be under the jurisdiction of the Real Estate Commission?

In regard to the Commission's investigative capabilities, both the former and current agency Executive Director's job duties include auction investigation responsibilities. This Commission policy has been effective for 13 years and has been an efficient means of addressing the agency's investigative needs.

Since the Real Estate Commission has about 28,000 licensees, it is indeed logical to assume that the Auctioneers' Commission's some 1,000 licensees would totally lose their identity if the two agencies were merged. In addition, absorption of the Auctioneers' Commission by the Real Estate Commission would only serve to be disruptive to the auctioneers, apprentice auctioneers and auction firms licensed in South Carolina.

Furthermore, it is doubtful that money could be saved in either budget or rent should the Real Estate Commission absorb functions of the Auctioneers' Commission, particularly since both the rent and budget amounts of the Commission are extremely small by comparison with most other State agencies.

Though the present Commission staff is composed of only three members, it is perfectly capable of administering the Commission's legislative mandate without being merged with the Real Estate Commission.

The Commission feels this recommendation is purely speculative and lacks sufficient merit and justification. With this in mind, the Commission respectfully requests this recommendation be deleted from the report.

ISSUE (5), RECOMMENDATION 7, PAGE G-14:

The Commission has no objection to the recommendation to amend Section 40-6-40 of the South Carolina Code of Laws to require at

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Auctioneers' Commission Response

least one member of the Commission not be associated with the auction business. From a practical standpoint, Governor Carroll A. Campbell, Jr. has already addressed the issue of consumer representation by appointing Mae W. Buzhardt of Batesburg, South Carolina to the Commission February 1990.

ISSUE (7), RECOMMENDATION 8, PAGE G-17:

The Commission agrees it should repeal its regulation that complaint forms be notarized so it is easier for the complainant to address his/her area of concern. Also, the Commission strongly agrees complainant letters should be considered official complaints that merit Commission action, without requiring the notarized form.

Previously, the intended purpose of the notarized complaint form was to allow complainants the opportunity to supply additional information, evidence and the names of any witnesses if such information was not contained in the initial complaint, which was received verbally or in writing.

ISSUE (7), RECOMMENDATION 9, PAGE G-17:

The Commission agrees it should develop a comprehensive tracking system of repeated complaints against individual auctioneers, as well as auction firms. The Commission currently has a complete database of all auctioneering licensees to date on its new computer system, and is in the process of developing a complaint tracking system.

The Commission does currently have an agreed policy to investigate an auctioneer with more than one complaint against him, depending on the merit and severity of the alleged offense or violation. Even if the complainant does not pursue action on a complaint worthy of disciplinary action, the agency director/investigator has the authority to initiate an administrative complaint and conduct an investigation in the matter. This area will also be included in the Commission's written investigation guidelines.

ISSUE (8), RECOMMENDATION 10, PAGE G-18:

The Commission appreciates your report acknowledgement it has followed all appropriate laws in developing its policies and procedures, increasing fees and carrying out its legislative mandate. However, in regard to the isolated incident of a license being improperly granted, the Commission respectfully requests this recommendation be deleted from the report.

Page 5

Auctioneers' Commission Response

After consultation with current Commission members serving at the time the license in question was granted to an automobile auction firm, they stated the Commission made its decision in consideration of legal advice it received. The matter was deliberated at two separate Commission meetings. After being addressed at the December 1988 meeting, the Commission would not issue the license and requested additional information and guidance on the subject. After further discussion at the January 1989 meeting, the license was issued under a split vote.

The license was issued because the Commission was advised, in effect, that since the South Carolina Department of Highways and Public Transportation had currently licensed the individual as a car dealer, the Commission lacked authority to deny the applicant an auctioneers' license.

The Commission has always made every effort to operate efficiently and in accordance to the provisions of South Carolina's laws and regulations. The Commission fully intends to do so in the future by not issuing licenses to individuals with felony convictions within five years of application for licensure.

Furthermore, the General Assembly passed H.3237 this year, which added the conviction of a felony as grounds for suspension or revocation of an auctioneering license. The Commission strongly supported H.3237 to further protect consumers from unscrupulous individuals who have been licensed in the profession and have later been proven guilty of violating the law.

In conclusion, since the improper granting of a license was an isolated incident, and it was obviously never the Commission's intent to grant such license improperly, the Commission respectfully requests this recommendation be deleted from the report.

State Commission for Hearing Aid Dealers and Fitters

State Commission for Hearing Aid Dealers and Fitters

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Introduction

Summary

After reviewing the operation and laws of the State Commission for Hearing Aid Dealers and Fitters, we conclude that there is a public need for regulation of hearing aid dealers. The licensure program provides a minimal level of assurance that persons needing hearing aids will be properly tested and fitted. Regulation of the industry is not costly, does not unreasonably limit competition, and helps protect the public health when properly administered. However, as discussed in this report, we found problems which reduce the effectiveness of the program and should be corrected.

Background

The Commission for Hearing Aid Dealers and Fitters was created by Act 535 of 1971. The State Department of Health and Environmental Control (DHEC) is responsible for administering the licensing program. DHEC issues licenses and temporary permits, investigates complaints, and performs inspections. The commission is required to guide and advise DHEC, prepare the practical examination, and approve continuing education courses.

The commission is composed of eight members. Four are licensed hearing aid dealers, one is an otolaryngologist (ear, nose and throat physician), one is an audiologist, and one is a consumer. The State Health Officer or his designee also serves on the commission.

More than one out of four people over the age of 65 has a hearing disorder, and an estimated 3.9 million people in the United States have hearing aids. South Carolina is one of 48 states which regulate the practice of fitting and selling hearing aids. In addition, the federal Food and Drug Administration has promulgated regulations dealing with hearing aids. As of August 3, 1989, there were 144 licensed hearing aid dealers and approximately 24 temporary permit holders in South Carolina.

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

The Commission for Hearing Aid Dealers and Fitters has no direct control over prices charged to consumers. While costs of regulation, such as examination and license fees and the expense of continuing education, may be indirectly passed on to the consumer, these costs are not likely to significantly affect the price of goods and services.

Determine the economic, fiscal and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

The commission assists DHEC in administering the program of regulation of hearing aid dealers. The fitting and sale of hearing aids is restricted to persons with licenses or temporary permits in order to protect the public from incompetent and/or unscrupulous practitioners.

DHEC conducts periodic inspections of dealers' facilities to check, primarily, whether audiometers (instruments used to measure the acuity of hearing) have been calibrated, whether records contain the required information, and whether facilities and equipment are clean. Entry requirements consist of a written and practical examination. DHEC tests licensees to ensure that they possess a minimum level of competency in measuring a person's hearing and fitting him for a hearing aid.

Incompetent practice can result in physical harm. For example, the improper fitting of an earmold impression can damage the ear; failure to clean or replace an otoscope tip after each use can cause infection to be passed from one client to another; and inaccurate audiogram readings can result in fitting a hearing aid which gives too much amplification, which in turn can cause greater hearing loss.

As previously stated, more than one out of four people over the age of 65 has a hearing disorder, and an estimated 3.9 million people in the United States have hearing aids. South Carolina is one of 48 states which regulates the practice of fitting and selling hearing aids. Deregulation would eliminate any measure of competency. It would also eliminate inspections and the threat of losing a livelihood by license revocation or suspension because of misconduct. This, in turn, would result in reduced accountability for hearing aid dealers. Therefore, we recommend that the commission and regulation of the occupation be continued.

Determine the overall costs, including manpower, of the agency under review.

Hearing aid dealer licensing fees do not pay for all costs of the program. DHEC collects revenues from license, permit and examination fees. State law allows DHEC to retain these fees for administration of the program. Although the fees have enabled the commission to exceed the requirement that revenues equal 115% of appropriated funds, the commission's appropriation does not include DHEC's costs of administering the program. DHEC does not maintain a separate budget for the commission. However, DHEC officials estimate that three DHEC employees spend a total of approximately 0.7 of one full-time employee in administering the program. Based on DHEC's estimate for FY 89-90, the cost of administering the program will exceed revenues by approximately \$21,000 (see Table 3H.1).

Table 3H.1: Source of Revenues, Expenditures, and Appropriations

	FY 85-86	FY 86-87	FY 87-88	FY 88-89	FY 89-90 (estimated)
Revenues^a					
License Fees	\$5,600	\$6,950	\$7,125	\$7,350	\$7,500
Temporary Permit Fees	900	875	1,200	1,025	900
Examination Fees	1,740	1,979	1,200	2,150	1,250
License Penalties (late renewal)	110	125	45	45	60
Total	\$8,350	\$9,929	\$9,570	\$10,570	\$9,710
Expenditures^a					
Personal Services (per diem)	\$245	\$490	\$175	\$140	\$150
Other Operating Expenses (travel)	150	334	145	173	160
Total	\$395	\$824	\$320	\$313	\$310
DHEC Estimate of Expense of Administering Program^b					
	\$35,958	\$34,950	\$34,466	\$37,106	\$30,603
State Appropriation	\$1,500	\$1,500	\$1,000	\$1,000	\$1,000

^aSource: South Carolina Budget and Control Board Documents.

^bSource: Department of Health and Environmental Control Office of Outpatient and Home-Care, Division of Health Licensing.

Fees Set by Statute

All fees except the examination fee are set by statute. The examination fee is set by regulation [R61-3, §101(e)]. When fees are set by statute, it is more difficult to change them as needed.

Recommendations

The Department of Health and Environmental Control should consider increasing fees to cover the actual costs of administering the program.

The General Assembly may wish to consider amending §40-25-100 and §40-25-120 of the South Carolina Code of Laws to delete the fees contained therein and to authorize the Department of Health and Environmental Control to set fees by regulation.

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

We found several areas in need of improvement in the administration of the program.

Practical Examination

The grading of practical examinations needs to be improved. In order to become a licensed hearing aid dealer an applicant must pass a practical examination covering five areas of knowledge in the fitting of a hearing aid. Performance in each area is rated as "excellent" or "satisfactory" or "unsatisfactory." The applicant may pass with one rating of unsatisfactory and four excellents, or, "Any other combination or rating, PASS/FAIL to be determined based on [the examiner's] assessment of the examinee's overall competence." However, three or more ratings of unsatisfactory results in automatic failure.

The examination is administered by a single examiner. Allowing a single examiner to determine the passing score on an exam can result in inconsistency in grading and could allow incompetent individuals to enter the profession or prevent qualified individuals from entering.

We reviewed all six exams of applicants who failed the practical exam in 1988. In five of the six exams, at least one of the areas rated as "satisfactory" in the body of the exam was reported as "unsatisfactory" in the rating summary on which pass/fail is determined. Additionally, one exam included a notation to the effect that, if the applicant passed the written exam, the examiner would pass him on the practical exam.

In addition, an applicant who was notified by DHEC that he had failed the October 1984 practical examination and would need to take the examination again was subsequently issued a license without re-taking the exam. We could find no documentation satisfactorily explaining why this individual's grade for the practical exam was changed from "failing" to "passing."

There is no provision in the law for an applicant who fails the practical examination to appeal the examiner's decision to the commission. Because the grading of the practical exam is subjective, an appeals process for those failing this portion of the test would help ensure that all applicants are treated fairly.

Recommendations

The Commission for Hearing Aid Dealers and Fitters should better define the passing score and improve the administration of the practical examinations.

The Department of Health and Environmental Control should provide a mechanism for appeal by those who fail the practical examination to the full Commission for Hearing Aid Dealers and Fitters.

Inspections

DHEC has not consistently followed-up on deficiencies found during inspections of licensed hearing aid dealers. In addition, DHEC has failed to consistently note on inspection forms audiometer calibration information.

Section 40-25-30 of the South Carolina Code of Laws requires DHEC to conduct periodic inspections of the facilities of licensed hearing aid dealers. These inspections include a check to make sure that audiometers (instruments used to measure the acuity of hearing) have been calibrated regularly.

We reviewed a random sample of 96 (51%) of 187 inspections conducted during FY 86-87 through FY 88-89 and found 33 inspection forms on which deficiencies had been noted. The most common type of deficiency was incomplete record-keeping.

In 7 (21%) of the 33 inspections where deficiencies were noted, we found no evidence of any action taken by DHEC. In the remaining inspections, action taken ranged from a verbal warning to requiring the licensee to take corrective action by a specific date and confirm it in writing to DHEC.

In addition, DHEC's inspection form contains a section for reporting audiometer calibration information. Regulation 61-3 requires that audiometers be calibrated at least once a year (see p. H-14). It is important that an audiometer be calibrated regularly to make sure that it is giving accurate readings. In 60 (63%) of the 96 inspections reviewed, we found no evidence that DHEC had inspected for yearly calibration.

Recommendations

The Department of Health and Environmental Control should implement a procedure to ensure that deficiencies noted during inspections are corrected.

The Department of Health and Environmental Control should ensure that calibration information is included on every inspection form.

Entry Requirements

We reviewed the entry requirements for licensees and temporary permit holders and found several questionable provisions. In addition, DHEC has not ensured that licensees have complied with all entry requirements.

Free of Contagious/Infectious Disease

Section 40-25-110 requires applicants for licensure to be free of contagious or infectious disease. However, this requirement is not defined. A random sample of 85 licensee files found that in 52 (61%) there was no physician's statement to indicate that the applicant was disease free. In addition, a review of all 24 temporary permit holders' files found that in 23 there was no physician's statement. Further, since 1982, DHEC has not required a physician's statement to be included as part of license renewal.

Age for Licensure

Section 40-25-100 requires an applicant for licensure by endorsement (licensure of out-of-state practitioners who meet South Carolina requirements) to be 18 years old and meet the good character and disease-free requirements. Section 40-25-110 requires in-state applicants to be at least twenty-one years of age. Thus, licensure can be less stringent for out-of-state applicants. A random sample of 85 licensee files found 11 licenses issued by endorsement. In 6 (54%) of the 11, no evidence was found to indicate that any of the requirements for licensure by endorsement were checked.

Recommendations

The General Assembly may wish to consider amending §40-25-110 of the South Carolina Code of Laws to either delete or define the requirements that applicants for licensure be free from contagious and infectious diseases.

The General Assembly may wish to consider amending §40-25-100 and §40-25-110 of the South Carolina Code of Laws to require the same minimum age for all applicants.

The Department of Health and Environmental Control should ensure that all requirements for licensure by endorsement are met prior to issuing a license.

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

There is one public member on the commission. State law requires the commission to meet at least once a year. While its meetings are open to the public, the commission has not routinely notified the general public by posting notice of meetings as required by the Freedom of Information Act; nor has it notified the news media. In addition, the commission has no telephone listing.

Recommendations

The Commission for Hearing Aid Dealers and Fitters should notify the public of its meetings as required by the Freedom of Information Act.

The commission should list its address and telephone number in both the state government and city of Columbia telephone directories.

Determine the extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity.

The commission advises and assists DHEC in administering the program for licensing hearing aid dealers. Although the commission does not duplicate the functions of any other agency, there appears to be some overlap in the functions of hearing aid dealers and audiologists.

As of January 22, 1990, of 148 licensed hearing aid dealers, 53 (35%) were also licensed audiologists (and 54% of 99 licensed audiologists held hearing aid dealer licenses). The State Board of Examiners in Speech Pathology and Audiology is responsible for licensing audiologists.

While the practice of audiology is broader in scope than the practice of fitting hearing aids, audiologists, like hearing aid dealers, engage in testing hearing and recommending hearing aids. However, an audiologists cannot sell a hearing aid unless he is licensed by the Commission for Hearing Aid Dealers and Fitters. Therefore, there is some overlap in the practice of hearing aid dealers and audiologists. We believe that it would be in the public interest for DHEC, the commission and the board to study and evaluate the two licensure programs to determine whether audiologists should be exempt from any of the requirements governing hearing aid dealers.

Recommendation

The Commission for Hearing Aid Dealers and Fitters, the Department of Health and Environmental Control, and the State Board of Examiners in Speech Pathology and Audiology should review the laws governing hearing aid dealers and audiologists to determine if audiologists could be exempted from any of the requirements governing hearing aid dealers.

Evaluate the efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed.

DHEC records show that, for FY 86-87 through FY 88-89, the agency handled 41 complaints relating to hearing aid dealers. We conducted a random sample of 32 complaints and found that in 23 (72%) of the files examined, the complaint involved an attempt to obtain a refund due to dissatisfaction with a hearing aid. The majority of the remaining complaints involved misleading advertising or failure to receive a hearing aid. In February 1989, DHEC instituted a complaint log for the eight programs, including hearing aid dealers, administered by its Office of Outpatient and Home Care.

No Final Disposition by DHEC

Fourteen (44%) of the 32 complaints reviewed arose from the closure of one licensee's business due to financial failure, and customers' inability to obtain refunds or service. State law allows DHEC to take action against a licensee on the basis of unethical conduct, such as making a sale by fraud or misrepresentation. Legal advice obtained by DHEC recommended action against the licensee. However, there is no record of action having been brought and no record of any official decision not to take action. According to a DHEC official, it was not necessary to take action, since a license is valid only for the named location and the license became null and void when the business closed. However, without formal resolution of the complaints, DHEC might not be able to use the complaint information in future matters relating to this individual.

In all complaints reviewed, there was no record of any disciplinary action against any licensee, and DHEC officials cannot recall ever bringing formal action against a licensed hearing aid dealer.

Recommendation

The Department of Health and Environmental Control should ensure that all complaints are disposed of and that all files contain documentation indicating the resolution of the complaint.

Determine the extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

The regulation of hearing aid dealers and fitters is governed by both state and federal law. We found several areas where DHEC and/or the commission have not complied with the law.

Continuing Education

DHEC has not ensured that hearing aid dealers are meeting continuing education requirements. Section 40-25-50 of the South Carolina Code of Laws requires all licensed hearing aid dealers to complete a minimum of eight hours of continuing education each year. The commission may, with sufficient cause, allow a licensee who has not met the minimum requirements to make up the necessary hours during the next year.

We reviewed a random sample of 85 (59%) of 144 licensee files for calendar years 1986 through 1988. Eleven of the 85 licensees had been licensed too recently to be subject to continuing education. Twenty (27%) of the remaining 74 files did not contain evidence of the continuing education requirement being met in one or more of the three years reviewed. Five (25%) of those 20 files, did not contain proof of continuing education for all three calendar years.

In three instances where licensees were excused from continuing education requirements one year, there is no evidence in DHEC files of their making up the required hours the following year.

Recommendation

The Department of Health and Environmental Control should ensure that all licensees meet the mandatory continuing education requirements.

Federal Regulation of Hearing Aids

The state statute which addresses medical examination prior to the fitting of a hearing aid is of doubtful validity since it is less stringent than the counterpart federal law. In this instance, federal law takes precedence over state law.

Section 40-25-70(3) of the South Carolina Code of Laws requires that a hearing aid dealer "ascertain" whether a child aged 12 or younger has had a medical examination within the previous three months. If the child has not had an examination, the dealer must recommend one and note this on the receipt. The statute does not address persons over 12 years of age.

In contrast, federal regulation 21 CFR §801.421, which takes precedence over state law, prohibits a hearing aid dispenser from selling a hearing aid unless the prospective user presents a physician's statement, evidencing a medical evaluation within the previous six months. A person aged 18 or older may waive the medical exam, in writing, but an exam is mandatory for persons under 18.

A 1977 Food and Drug Administration notice states:

Hearing loss can result from a number of conditions and diseases for which a hearing aid may not be appropriate. This [federal] regulation is designed to assure that all medically treatable conditions which may affect hearing are accurately identified and properly treated before a hearing aid is purchased.

Because the state statute is different from and less stringent than the federal regulation, it may be invalid. In addition, it reduces the level of health protection provided the public.

Recommendation

The General Assembly may wish to consider amending §40-25-70(3) of the South Carolina Code of Laws to bring it into compliance with federal regulation 21 CFR §801.421.

Yearly Calibration of Audiometers

DHEC has not ensured that audiometers are properly calibrated. DHEC regulation 61-3, §201 requires audiometers to be calibrated at least once each year. Evidence of calibration is to be furnished with the license renewal application.

We reviewed 85 (59%) of 144 licensee files for calendar years 1986 through 1988 to determine if audiometers had been calibrated yearly. Eleven of the 85 licensees had been licensed too recently to be subject to the calibration reporting requirement. We found in 1986, 39 (53%) of the remaining 74 licensee files did not contain evidence of calibration. In 1987, 10 (14%) and in 1988, 13 (18%) of the 74 files did not contain evidence of calibration. Accurate audiometers are necessary to properly test a person's hearing.

Recommendation

The Department of Health and Environmental Control should ensure that audiometers are calibrated at least once each year and that evidence of calibration is maintained on file.

Progress Reports on Temporary Permit Holders

DHEC has not ensured that progress reports on temporary permit holders are submitted. DHEC regulation 61-3, §103(b) requires that supervisors of temporary permit holders submit quarterly progress reports to DHEC. The reports are used to help document that permit holders receive adequate training and supervision.

We reviewed 17 of 24 temporary permit holder files. The remaining seven temporary permit holders had not held permits long enough to require quarterly reports. In 7 (41%) of the 17 files, in which permit holders had held permits ranging from 6 to 11 months, no quarterly reports were found.

Recommendation

The Department of Health and Environmental Control should ensure that licensees who supervise temporary permit holders submit progress reports each quarter.

Licensure by Endorsement

The commission has not fully complied with state law governing endorsement. Section 40-25-100 of the South Carolina Code of Laws provides for licensure by endorsement, without examination, of persons who are licensed by other states which have requirements equivalent to or higher than those in South Carolina.

Since 1985, applicants from only North Carolina and Georgia have been licensed without being tested. Georgia's requirements are not equivalent to those in effect in this state in that Georgia, unlike South Carolina, does not require an education equivalent to a four-year course in an accredited high school. Thus, the commission has inappropriately licensed Georgia applicants without examination. By contrast, applicants from all other states have routinely been required to pass the examination as a prerequisite to licensure, regardless of whether their states' licensure requirements were at least equivalent to South Carolina's. This approach can cause unnecessary expense and burden on out-of-state applicants and could unreasonably restrict entry into the profession.

Recommendation

Upon application for licensure by endorsement, the commission should review the licensure requirements of the state in which the applicant is licensed and should determine whether such requirements are equivalent to or higher than those in effect in South Carolina.

Notice of Hearing

The Fitting and Selling of Hearing Aids Act and the Administrative Procedures Act provide for varying amounts of notice to a licensee that a disciplinary hearing will be held. Section 40-25-160 of the South Carolina Code of Laws provides for a hearing upon at least 20 days notice to the licensee. Section 1-23-320 of the Administrative Procedures Act, which would govern, requires not less than 30 days notice.

Recommendation

The General Assembly may wish to consider amending §40-25-160 to provide for notice of hearing in conformance with the Administrative Procedures Act.

Mileage Allowance

Section 40-25-40(4) of the South Carolina Code of Laws provides for commission members to receive ten cents per mile when on commission business. During three years ending June 30, 1989, commission members were paid at the rate of 21 cents per mile, as provided for in annual appropriation acts.

Recommendation

The General Assembly may wish to consider amending §40-25-40 to provide for a mileage allowance at the rate provided by law for members of state boards and commissions.

Reporting by Business Entities

Section 40-25-60(2) of the South Carolina Code of Laws requires each business entity involved in the retail sale of hearing aids to file annually with DHEC a list of all licensed hearing aid dealers employed by the company, and a statement that the entity submits itself to the state hearing aid laws. This provision has not been enforced by DHEC. Further, it is doubtful that DHEC has the authority to enforce it, since DHEC's jurisdiction in administering this program does not extend to persons/entities whom it does not license.

Recommendation

The General Assembly may wish to consider deleting §40-25-60(2) pertaining to filing/reporting requirements by business entities.

Schedule of Fees FY 88-89

	Fee
Initial and Renewal Temporary Permit Fee	\$25
Examination Fee	50
Initial and Annual Renewal License Fee	50
Late Renewal (30 days late)	60
Late Renewal (more than 30 days late)	75

Source: Code of Laws of South Carolina, 1976, and the Department of Health and Environmental Control Regulation 61-3.

Commission for Hearing Aid Dealers and Fitters Comments



June 4, 1990

George L. Schroeder, Director
Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

Dear Mr. Schroeder:

We appreciate the opportunity to comment upon the Legislative Audit Council's Sunset Review Report on the Commission for Hearing Aid Dealers and Fitters. We were impressed with the length and scope of the audit. The inclusion of the Department's functions in relation to the Commission's responsibilities and duties was unexpected but apparently justified considering their interdependence.

We generally agree with the findings and recommendations. However, we request that you consider the specific comments which follow. These items are addressed and referenced by page number and paragraph.

Page H-7, Paragraph 2

We suggest that the second recommendation be changed to read: "The General Assembly may wish to consider amending 40-25-110 of the S.C. Code of Laws to provide for an appeal process in accordance with the Administrative Procedures Act. In addition, the General Assembly may wish to consider amending 40-25-170 of the S.C. Code of Laws to conform with the Administrative Procedures Act."

Page H-8, Paragraph 1 and 2

The report, on page H-7, confirms that the Department does have a procedure to review audiometer calibrations and to ensure that deficiencies noted during inspections are corrected. The individual is required to submit in writing a plan of corrective action within a specified time-frame. This plan of corrective action addresses how the deficiency will be corrected in order to maintain compliance with Regulation 61-3. These deficiencies are again examined on the next annual inspection or sooner if necessary. However, the report indicates, and we recognize the need to be more consistent in implementing those procedures.

Commissioner: Michael D. Jarrett Board: Henry S. Jordan MD, Chairman John B. Pate, MD, Vice Chairman William E. Applegate, III, Secretary
Toney Graham, Jr., MD John H. Burris Richard E. Jabbour, DDS Currie B. Spivey, Jr.
2600 Bull Street Columbia, South Carolina 29201

June 4, 1990
George L. Schroeder
Page 2

Page H-9, Paragraph 1

The Department agrees that the General Assembly may wish to consider amending 40-25-110 of the S.C. Code of Laws to clarify the statement that applicants be free of contagious or infectious disease. Physicians are reluctant to give an individual a statement that "he/she is free of communicable disease". Furthermore, it is not accepted medical practice to routinely require an annual physical. There is no guarantee that a communicable disease could not be contracted between routine annual physicals. This requirement was addressed by the Commission during the 1981 annual meeting. It was the decision of the Commission to remove this statement from the licensing application. The Department recommends that the statement in 40-25-110 be changed to "An individual may not conduct business if he/she has a contagious or infectious disease".

Page H-11

We recommend that the appropriate legislative committee should coordinate a study to evaluate the two licensing entities and their requirements. The study group should include representatives from the Department, the Commission and the State Board of Examiners in Speech Pathology and Audiology. This has been a long-standing concern and should be implemented as soon as possible.

Page H-12, Paragraphs 2 & 3

In reference to the statement, "...there is no record of action having been brought and no record of any official decision not to take action", no action could be taken due to the fact that this individual's license no longer existed. The last statement in Paragraph 2 is pure speculation and should be deleted. Additionally, although the Commission, itself, may not have had to take formal proceeding against a licensee, when the Department requires a dealer to take corrective actions, that is an admonition and reprimand. We recommend that the General Assembly add a provision in the law (Section 40-24-160) to give DHEC the authority to require a refund in the case of poor service, misrepresentation of product, etc. This would serve to further protect the consumer.

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Page H-13, Paragraphs 1 & 6

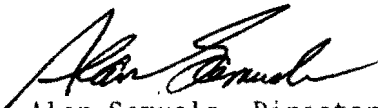
The Department does comply with state law. The Department does not have the authority to enforce this federal law. Discrepancies between state and federal law cannot be addressed by DHEC.

Page H-16, Paragraph 2

Applicants from states other than N.C. and Georgia have routinely been required to submit to examination. This is for a legitimate reason. The Department cannot effectively inspect licensed dealers practicing at business locations other than these two adjacent states. The Department would have no regulatory control over these individuals. In addition, the S.C. Code of Laws, Section 40-25-100, states that endorsement considerations are granted based on the discretion of the Department and Commission. Note: See Attachments I and II.

We hope that you find our comments and recommendations to be beneficial. If you have any questions or are in need of additional information, please do not hesitate to contact us at 734-4680.

Sincerely,



Alan Samuels, Director
Division of Health Licensing

AS:GRM:jbc

Attachments

Attachment I
MINUTES

SOUTH CAROLINA COMMISSION FOR HEARING AID DEALERS AND FITTERS

S. C. DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL - BOARD ROOM

OCTOBER 25, 1984

Call To Order: 9:05 a.m.

Members Present: Nettie Spraker Allen
H. LeNoy Kyzer
Harold D. Minton
Ellis Thomas, III
Suzanne Watt
Dr. Frank W. Young
John H. Young, Jr.
J. Richard Coney, Deputy Commissioner, representing the
the Commissioner of the Department of Health and Environmental Control

Members Absent: None

Others Present: Alan Samuels, William J. Wicker,
Serlinda C. Hope - Office of Health Licensing

New members were welcomed.

Minutes of the April 28, 1983 meeting were approved.

1. Certificates of Endorsement (Reciprocity Agreements).

a. Moved by Dr. Young, seconded by Mr. Young:

The department shall inspect places of business of dealers who are licensed by certificate of endorsement (reciprocity) in the same manner as are all other licensees. Should a licensee not have a place of business in South Carolina, the licensee must agree in writing, as part of the application, to inspections by the Department in his regular place of business in the neighboring state. PASSED

b. Moved by Dr. Young, seconded by Mr. Young:

The Department may issue certificates of endorsements to any individual who has a current, valid, unrestricted license issued by the State of North Carolina based on examination. However, prior to issuing such certificate, the Department shall ascertain that the applicant is in good standing in North Carolina. PASSED

c. The Department may not issue certificates of endorsement based on licenses issued by New Jersey, Arizona and Indiana. Certificates of endorsement will be restricted to adjoining states, plus those states currently approved.

2. Written Examination

National Hearing Aid Society (NHAS) recommended 70% on each section of exam. Applicant must retake each section that was failed.



len M. Fortson, Jr.

SECRETARY OF STATE

Ann E. Adamson

ASSISTANT
SECRETARY OF STATE
(404) 656-2801

Attachment II

Secretary of State
Examining Boards Division
166 Pryor Street S.W.
Atlanta 30303

November 2, 1978

WOW 11/6 WEN
HME 11/6
WJW 11/6 W

James E. Shrine

JOINT SECRETARY
(404) 656-3900

South Carolina Dept. of Health & Control
Hearing Aid Licensing Division
Sims-Aycock Building
2600 Bull Street
Columbia, South Carolina 29201

Gentlemen:

Georgia Law provides that the Georgia State Board of Hearing Aid Dealers and Dispensers may issue nonresident licenses to any applicant who holds a current unsuspended, unrevoked license to practice the dispensing of hearing aids in another state or jurisdiction. The Board can issue these nonresident licenses only if the state or jurisdiction which issued the resident license has entered into a reciprocal agreement with the Georgia State Board to do the same for residents of Georgia.

There are other requirements on the applicant for Georgia nonresident license but these are of no concern if there is no reciprocal agreement.

For your information, a copy of the applicable Georgia Law is enclosed. Section 84-5608 deals with nonresident licenses.

The Georgia State Board of Hearing Aid Dealers and Dispensers will be pleased to enter into a reciprocal agreement with you for granting nonresident hearing aid dispensers licenses.

Please furnish a response as soon as possible. The next Board meeting is scheduled for November 14, 1978.

Sincerely yours,

STATE BOARD OF HEARING AID DEALERS AND DISPENSERS

Victor H. Bray

By: Victor H. Bray
Chairman

VHB/mhp

enclosure

RECEIVED

NOV 6 1978

BUREAU OF HEALTH
LICENSING & CERTIFICATION

Report Appendix

FTC Comments November 7, 1989



BUREAU OF COMPETITION

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

November 7, 1989

George L. Schroeder
Director
Legislative Audit Council
State of South Carolina
620 NCNB Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

The staff of the Federal Trade Commission¹ is pleased to respond to the invitation of the Legislative Audit Council of the State of South Carolina to comment on the possible restrictive or anticompetitive effects of the statutes and regulations governing eight state agencies.² The analysis below discusses provisions governing three of the agencies that may have anticompetitive effects and thereby injure consumers. Those agencies are the Commissioners of Pilotage for the Port of Charleston, the Auctioneers' Commission, and the Board of Registration for Foresters. Our comments are largely confined to the provisions that your letter identifies as raising possible competitive concerns.

Although the statutes and regulations of the five agencies on which we do not comment may also raise significant competition issues, we do not have the expertise to offer an opinion on their merits. You may wish, however, to consider these provisions in light of the analysis of the published research on the effects of occupational licensing that we submitted to you on January 23, 1989.

I. Interest and Experience of the Staff of the Federal Trade Commission

The Federal Trade Commission is charged by statute with preventing unfair methods of competition and unfair or deceptive practices in or affecting commerce. 15 U.S.C. § 45. Under this

¹ These comments are the views of the staff of the Federal Trade Commission's Bureau of Competition. They are not necessarily the views of the Commission itself or any individual Commissioner.

² The agencies regulate harbor pilots, polygraph examiners, private detectives and private security agencies, foresters, professional counselors and marital and family therapists, auctioneers, and hearing aid dealers and fitters. Another agency promotes economic development in South Carolina.

George L. Schroeder
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statutory mandate, the Commission seeks to identify restrictions that impede competition or increase prices without offering countervailing benefits to consumers. The Commission has sought to improve consumer access to professional services by initiating antitrust enforcement proceedings.³ In addition, the staff of the Commission has studied various facets of the regulation of licensed professions,⁴ and has submitted comments to state legislatures and administrative agencies, including the Legislative Audit Council of South Carolina,⁵ on various issues of professional licensing and regulation.⁶

³ See, e.g., *Massachusetts Board of Registration in Optometry*, 110 F.T.C. 549 (1988); *Rhode Island Board of Accountancy*, 107 F.T.C. 293 (1986) (consent order); *Louisiana State Board of Dentistry*, 106 F.T.C. 65 (1985) (consent order); *American Medical Ass'n*, 94 F.T.C. 701 (1979), *aff'd*, 638 F.2d 443 (2d Cir. 1980), *aff'd mem. by an equally divided court*, 455 U.S. 676 (1982); *American Dental Ass'n*, 94 F.T.C. 403 (1979), *modified*, 100 F.T.C. 448 (1982), 101 F.T.C. 34 (1983) (consent order).

⁴ See, e.g., *Cleveland Regional Office and Bureau of Economics, Federal Trade Commission, Improving Consumer Access to Legal Services: The Case for Removing Restrictions on Truthful Advertising* (1984); *Bureaus of Consumer Protection and Economics, Federal Trade Commission, A Comparative Analysis of Cosmetic Lens Fitting by Ophthalmologists, Optometrists, and Opticians* (1983); *Bureau of Economics, Federal Trade Commission, Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry* (1980).

⁵ The staff of the Commission has provided comments to the Legislative Audit Council on six prior occasions. In comments filed from February 1987 through March 1989, the staff commented on statutes and regulations governing the state's Board of Optometry and Opticianry, Board of Podiatry Examiners, Board of Occupational Therapy Examiners, Board of Speech and Audiology Examiners, Board of Psychology Examiners, Public Service Commission, Licensing Board for Contractors, Residential Home Building Commission, Real Estate Commission, Board of Certification for Environmental System Operators, Board of Registration for Professional Engineers and Land Surveyors, Manufactured Housing Board, Board of Registration for Landscape Architecture, Board of Architectural Examiners, Board of Funeral Service, Board of Examiners for Registered Sanitarians, Board of Social Work Registration, and Building Code Council.

⁶ See, e.g., *Comments of Staff of Federal Trade Commission on Florida Bar Rules of Professional Conduct* (July 17, 1989); *Comments of Federal Trade Commission Staff on Rules of Idaho State Board of Chiropractic Physicians* (December 7, 1987).

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II. Analysis of Statutes and Regulations

A. Commissioners of Pilotage for the Port of Charleston

The statute governing the Commission of Pilotage for the Port of Charleston contains a number of provisions that restrict entry into the business of pilotage. The statute limits the number of pilots in the port of Charleston to fifteen.⁷ To be eligible for a pilot's license, an applicant must be recommended by a majority of the pilots in the port of Charleston.⁸ In addition, all boats commissioned and used for pilotage in Charleston, must be "owned and manned by the group of associated pilots then currently licensed."⁹ Licensed pilots are prohibited from engaging in any business other than pilotage¹⁰ and from discontinuing pilotage services, other than for reasons of health, without the authorization of the commissioners of pilotage.¹¹

The statute also contains provisions governing the price of pilotage services. It authorizes the commissioners of pilotage to fix the rates and fees for pilotage services.¹² The statute requires every vessel entering the harbor pilotage area to accept pilotage services and enforces this requirement by mandating that a vessel pay for the services even if it declines the use of a pilot.¹³ Finally, while the statute requires vessels to use licensed pilots, it limits liability for damages caused by pilots' "errors, omissions, fault, or neglect" to \$5000.¹⁴

Although we do not have expertise in harbor pilotage, and thus cannot predict with certitude the effects of the restrictions outlined above, the effects of price and entry

⁷ S.C. Code Ann. § 54-15-130. See also S.C. Code Ann. § 54-15-120. Similar restrictions are imposed in other ports as well. See S.C. Code Ann. § 54-15-130. For convenience, we address solely the provisions concerning the Port of Charleston.

⁸ S.C. Code Ann. § 54-15-60.

⁹ S.C. Code Ann. § 54-15-180.

¹⁰ S.C. Code Ann. § 54-15-200.

¹¹ S.C. Code Ann. § 54-15-210.

¹² S.C. Code Ann. § 54-15-290.

¹³ S.C. Code Ann. § 54-15-270.

¹⁴ S.C. Code Ann. § 54-15-350.

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regulations for harbor pilotage are likely to be similar to those in other markets. It should be emphasized that our analysis is confined to the effects of price and entry regulations and does not address regulations designed to enhance navigational safety. We recognize that safety regulation in the maritime context is necessary to protect not only seafaring vessels but also the public at large, which can suffer great harm from the discharge of various kinds of cargo in navigational mishaps.

Restrictions on entry tend to increase the price of the goods or services provided by a line of business.¹⁵ As a general matter, markets are better equipped than regulators to determine the appropriate level of supply of a service, by adjusting the supply for any service in response to changes in demand. Thus, an increase in the use of Charleston harbor, and hence in the demand for pilotage services, would tend to lead to an increase in the price of pilotage services. Such an increase would, in turn, attract entry into the pilotage business and lead to the stabilization of the price at the competitive level. Conversely, a decline in the demand for pilotage services would tend to result in a decrease in the price for the service and the exit of some pilots from the business, with the price again stabilizing at the competitive level.¹⁶ Absent regulatory restrictions or other barriers or impediments to entry,¹⁷ markets tend to adjust supply quickly to meet demand for a service.

When the number of suppliers is fixed by statute, as it is for pilots in South Carolina, the opportunity for new suppliers to enter into the market is curtailed. As a result, incumbents may charge higher prices than would prevail in a competitive

¹⁵ Please refer to Part II of our January 23, 1989, letter to you for a discussion of the effects of entry restrictions imposed through licensing on the price of professional services.

¹⁶ The increase or decline in demand referred to in the text must be more than temporary to have these effects. Obviously, all businesses will have day-to-day or month-to-month fluctuations in demand for their services.

¹⁷ Barriers to entry are long-run costs that must be incurred by entrants into a business but were not incurred by incumbent firms. Environmental regulations, for example, can be entry barriers. Impediments to entry are conditions that necessarily delay entry into a market for a significant period, such as when new entry is possible only through the construction of a plant that cannot be completed for a number of years. See *B.F. Goodrich Co.*, 110 F.T.C. 207, 295-97 (1988).

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market.¹⁸ The statute further deters the entry of suppliers who are likely to be vigorous competitors by conditioning new entry, when the number of licensed pilots falls below fifteen, on the entrant's endorsement by a majority of incumbent license owners. Given an opportunity to veto new entry, incumbents may prevent particularly aggressive competitors or innovative and more efficient suppliers from entering the market. By empowering incumbents to select entrants, the law encourages pilots to act as collaborators, not competitors.

The statute also limits the business practices of pilots in a manner that may reduce the efficiency of service. Thus, the requirement that all boats used for pilotage in Charleston be "owned and manned by the group of associated pilots then currently licensed," coupled with the prohibition on license holders' engaging in businesses other than pilotage, prevents potentially beneficial business arrangements. For example, the restrictions prevent shipping firms that use Charleston harbor from operating pilotage services for their own vessels and may prevent efficient providers of pilotage services from simultaneously operating more than one pilot boat.¹⁹ Together, these restrictions tend to encourage incumbent license holders to operate as a close-knit fraternity of pilots, rather than as businesses that compete vigorously in whatever spheres offer an opportunity for profit.²⁰

South Carolina law also provides for price regulation of pilotage services. Although price regulation may have originated as a means to prevent public utilities, which were thought to be

¹⁸ A study by the Commission's Bureau of Economics concerning restrictions on entry into the taxi market, which appear to be analogous to regulations restricting entry into the pilotage market, is particularly instructive. Among other things, the study concluded that entry restrictions enable incumbent firms to exercise market power. See M. Frankena & P. Pautler, *An Economic Analysis of Taxicab Regulation* (FTC Bureau of Economics 1984).

¹⁹ If each license holder must both own and operate his boat, he is unlikely to operate more than one boat. If, alternatively, the statute mandates that boats be owned and operated collectively by the group of licensed pilots, it would, at a minimum, reduce competition among pilots.

²⁰ The restriction against discontinuing pilotage other than for reasons of health, if it is designed to insure that enough pilots are available at any time, might become unnecessary if entry restrictions were removed and the market were allowed to determine the number of pilots in business.

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natural monopolies, from exploiting their market power,²¹ some scholarly studies have questioned whether public utility regulation results in lower prices than would prevail without rate regulation.²² Whatever the effects of price regulation on natural monopolies, in otherwise competitive markets consumers typically benefit from vigorous competition among suppliers that is unimpeded by rate regulation.²³

There is reason to believe that South Carolina's law may not result in the lowest prices possible for the quality of services pilotage customers prefer, in spite of the provision for price regulation.²⁴ As an initial matter, it appears that the pilots' association may exercise some influence over the Commission of Pilotage. Although the statute directs the Commission of Pilotage to establish price regulations, the regulations do not set forth price levels or procedures for determining them. Instead, the Commission's regulations authorize the pilots' association to adopt a "Financial Agreement embodying such details with respect to monetary matters as they feel are necessary to fairly provide for and protect the interests of present and future members as well as retired members."²⁵ Even if incumbent pilots do not exercise influence over the Commission's decisions, incumbent pilots may lack the incentive to innovate and increase the efficiency of their service in the absence of a market-based incentive, such as the opportunity to capture market share by offering a service at a lower price.

²¹ See S. Breyer, *Regulation and Its Reform* 15-18 (1984); Jarrell, *The Demand for State Regulation of the Electric Utility Industry*, 21 J.L. & Econ. 269, 272-76 (1978).

²² See, e.g., Stigler & Friedland, *What Can Regulators Regulate? The Case of Electricity*, 5 J.L. & Econ. 1 (1962); Moore, *The Effectiveness of Regulation of Electric Utility Prices*, 36 So. Econ. J. 365 (1970); ; Jordan, *Producer Protection, Prior Market Structure and the Effect of Government Regulation*, 15 J.L. & Econ. 151 (1972).

²³ We have no reason to believe that harbor pilotage is a natural monopoly. For that reason, price regulation likely represents a response to entry restrictions, which may enable incumbent pilots to charge higher than competitive prices.

²⁴ Insofar as price regulation succeeds in maintaining prices at a lower level than would prevail in an unregulated market, it can reduce suppliers' incentive to provide the quantity and quality of the regulated products that consumers desire.

²⁵ Regulations of Commission of Pilotage for the Port of Charleston, § 4 (emphasis added).

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Such an incentive is restrained by regulatory barriers to entry and the impediment to competitive operation of multiple pilot boats. Consequently, regulatory restrictions would tend to discourage cost-saving innovations that could lead to lower prices.²⁶

Finally, the statutory limitation on damages resulting from pilots' negligence may reduce the quality of pilotage services. Exposure to liability provides pilots with an incentive to adopt safety measures whose cost is lower than the expected benefit. For example, absent liability limitations, a rational pilot would buy a \$400 device if it can reduce the likelihood of an accident causing \$50,000 in damage from 2 percent to 1 percent.²⁷ But with a \$5,000 damage cap, the pilot would not buy the safety-enhancing device unless its cost was less than \$50. As a result, overall safety is likely to diminish in the long run.

B. Auctioneers' Commission

You have asked us to address two provisions of the South Carolina statute and regulations governing auctioneers. First, the auctioneering statute requires applicants for an apprentice auctioneer license to submit statements by at least two licensed auctioneers attesting to the applicant's moral character.²⁸ We doubt that this provision has a significant effect on competition because South Carolina law also provides for the licensing of auctioneers who have not served as apprentices but have had at least eighty hours of classroom instruction in auctioneering.²⁹ These applicants can satisfy the statutory moral fitness

²⁶ Another possible outcome of price regulation is that prices are lower than they would be under an unregulated monopoly but higher than they would be in an unregulated competitive market. It is thus possible that pilotage prices could be even higher if entry restrictions were not accompanied by price regulation, though not as low as they would be if both entry restrictions and price regulations were removed. For that reason, if the Commission on Pilotage in fact has a functioning system for regulating the price of services rendered, we suggest that any repeal of price regulation should be accompanied by the repeal of entry restrictions.

²⁷ This is because the value of a one percent reduction in the probability of a \$50,000 loss is \$500 (one percent of \$50,000). For simplicity of illustration, we have eliminated the time element from this example and assumed the loss to be immediate.

²⁸ S.C. Code Ann. § 40-6-70.

²⁹ S.C. Code Ann. § 40-6-130.

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requirement by submitting the statements of two residents of South Carolina, who need not be auctioneers.³⁰ This provision would tend to prevent incumbent auctioneers from restricting entry into the profession by refusing to certify applicants' moral character. Consequently, the moral fitness requirement would seem to have little adverse impact.³¹

The second provision you have asked us to review is a regulation that prohibits auctioneers from advertising any award, title, or other recognition received from any association or professional organization that has not been approved by the Auctioneers' Commission.³² The regulation establishes a procedure for requesting the Commission's approval of a particular association or organization body for promotional purposes and requires the Commission to grant such approval unless a reference to that body would be misleading.³³

The advertising of awards, titles, or other forms of recognition by professional organizations can help consumers predict the nature and quality of the services available from various practitioners. The quality of professionals within any profession can vary widely, and the recognition of particularly skillful practitioners by bona fide professional organizations can be useful to consumers in differentiating professionals.³⁴ Professional awards and certification may provide a useful means for consumers to overcome a lack of information about the experience, knowledge, and skills of practitioners.

³⁰ *Id.*

³¹ To the extent that qualifying auctioneer classes are not widely available, so that apprenticeship is the principal avenue for entry into the profession, the requirement of attestations by incumbent auctioneers could have some marginal adverse impact on competition. See Part II(C), *infra*.

³² Regulations of the Auctioneers' Commission, § 14-18.

³³ *Id.*

³⁴ The Alabama Supreme Court has observed that "[i]t would be less than realistic for us to take the position that all lawyers, in fact, possess equal experience, knowledge and skills with regard to any area of legal practice." *Ex Parte Howell*, 487 So.2d 848, 851 (1986). The same is likely to be true for auctioneers. The Alabama court held that a total ban on attorneys' truthful representations of professional recognition by certification organizations was unconstitutional, and elected instead to permit advertising only of certification by approved organizations.

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Consumers benefit from information concerning professional recognition when that recognition represents an objective measure of a professional's performance that is relevant to the services the professional provides. Absent these conditions, claims of professional recognition may deceive consumers. The public may be misled by claims concerning professional recognition that are not in fact based on the professional's advanced training or experience or the professional's attainments in the profession. Claims of professional recognition may also mislead consumers when a professional is recognized in a field that is not relevant to the services the professional offers. For these reasons, some regulation of professionals' certification claims may be appropriate to prevent or cure any deception.

C. Board of Registration for Foresters

You have asked us to review two provisions of the South Carolina law and regulations governing foresters. The first provision requires applicants for a license as a forester to furnish three references from foresters having personal or professional knowledge of the applicant's forestry experience.³⁵ We are not sufficiently familiar with the structure of the forestry market in South Carolina to predict the effects of this requirement. While any provision that requires entrants to secure the endorsement of incumbents to enter a profession may restrict entry, it will not necessarily have that effect. Many states, for example, require applicants for licenses as attorneys to secure references from incumbents, but this requirement is highly unlikely to inhibit entry. To the extent that entry is deterred, it is by the licensing requirement itself. On the other hand, if the forestry market is not competitive and the number of incumbent licensees is small, the reference requirement could result in restricted entry.

The second provision is a regulation setting forth a code of ethics for foresters.³⁶ Although some codes of ethics may mask anticompetitive restrictions in the guise of ethics,³⁷ codes of ethics can also be beneficial. Provisions in codes of ethics that prohibit conflicts of interest or breaches of confidential relationships, for example, can benefit consumers. We do not

³⁵ S.C. Code Ann. § 48-27-140.

³⁶ Regulations of Forestry Registration Board, § 53-15.

³⁷ See, e.g., *National Society of Professional Engineers v. United States*, 435 U.S. 679 (1978).



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find any provisions in the code of ethics adopted by the Foresters' Registration Board that raise competitive concerns.

Conclusion

We are pleased to have this opportunity to present our views on the licensing statutes and regulations that you have submitted for our review. Our analysis suggests that certain provisions governing harbor pilots, auctioneers, and foresters could have anticompetitive effects. We are particularly concerned that provisions restricting entry into the harbor pilotage business could result in higher prices for pilotage services. If the Council has questions concerning provisions not discussed in this letter, we encourage you to contact us for further review.

Sincerely,

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